ReCreating Europe

Rethinking digital copyright law for a culturally diverse, accessible, creative Europe

Grant Agreement No. 870626

Deliverable Title	**D2.9 Policy recommendations and code of best practices**
Deliverable Lead:	SSSA
Partner(s) involved:	USZ, NUIM
Related Work Package:	WP2 – End users and access to culture
Related Task/Subtask:	T2.9
Main Author(s):	Caterina Sganga (SSSA)
Other Author(s):	Camilla Signoretta (SSSA), Peter Mezei (USZ), Delia Ferri (NUIM), Noelle Higgins (NUIM)
Dissemination Level:	Public
Due Delivery Date:	30.09.2022
Actual Delivery:	30.09.2022
Project ID	870626
Instrument:	H2020-SC6-GOVERNANCE-2019
Start Date of Project:	01.01.2020
Duration:	36 months

Version history table			
Version	**Date**	**Modification reason**	**Modifier(s)**
v.01	01.09.22	First draft	Caterina Sganga, Camilla Signoretta, Peter Mezei, Delia Ferri, Noelle Higgins
v.02	21.09.22	Implementation of feedback received during Policy Recommendations (20.09, BXL) and Best Practices (21.09, AMS) workshops.	Caterina Sganga
v.03	26.09.22	Draft sent to QEs for peer-review	Caterina Sganga, Pelin Turan
v.04	30.09.22	Final draft	Caterina Sganga

Legal Disclaimer

Executive Summary

This deliverable contains the Best Practices and Policy Recommendations developed by WP2 on copyright flexibilities and access to culture. Best practices are directed to stakeholders, and aim at facilitating the understanding and use of the most important copyright flexibilities offered by the EU and national legal systems. Policy Recommendations build on the data and other findings produced by WP2 research to propose reforms directed to national and EU policymakers, with the aim of achieving a fairer copyright balance, which incentivises a diversified and competitive cultural and creative production while ensuring access to culture and the enjoyment of basic fundamental rights to all.

Best practises were compiled on the basis of the mapping of statutory and case law sources in all Member States. They were tested at a n expert and stakeholders workshop that took place in Amsterdam (Institute of Information Law – University of Amsterdam) on 21 September 2022, and was jointly organized with Communia. On the basis of the feedback received, the best practices will be transformed in guidance, rendered more user-friendly and disseminated online via social media, stakeholders' organizations, and the website www.copyrightuser.eu and www.copyrightflexibilities.eu.

Draft policy recommendations were compiled in coordination with other WPs and tested in an informal workshop held in Brussels on 20 September 2022 with interested EC policymakers. On the basis of the feedback received, and of other informal exchanges which are planned in the following months, they will be revised in structure and approach in order to be ultimately presented at the project's final conference in the end of January 2023.

Guidance and best practices were prepared on the basis of the findings of the EU and comparative mapping of copyright flexibilities, and on the outcome of the surveys and interviews conducted under WP2. They were tested at a workshop with experts and stakeholders held at the Institute of Information Law of the University of Amsterdam on 21 September 2022. On the basis of the feedback received, they will be revised and embedded in a stakeholder-friendly format on the website www.copyrightuser.eu, and presented at the project's final conference in the end of January 2023.

ReCreating Europe

Understanding and learning to use copyright flexibilities

Guidance and best practices

Authors

Caterina Sganga, Camilla Signoretta

ReCreating Europe

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

PRIVATE COPY AND REPROGRAPHY

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

Digital users are nowadays overwhelmed by digital files and products, usually protected by copyright. Yet, accessing these files and use them for private purposes usually requires the act of reproduction to store the copy in your laptop and visualize it on a time-shifting basis.

In order not to discourage purchases of protected works and allow consumers to make further use of copyrighted works with limited impact on the market of the work at issue, a specific exception under EU copyright law enables users to photocopy a protected work of any kind for non-commercial and strictly private reasons. Under the EU text, fair compensation shall be corresponded to rightholders, by taking into consideration if some technical measures (such as popups and bans) are in place to prevent acts of downloading and photocopying of protected works online. Sharing the same rationale, there is also an exception tailormade for reprography, allowing to make copies of protected works via reprographic techniques and techniques of the like, on paper and similar mediums, provided that rightsholders are compensated.

Usually, EU countries provide levies or other similar compensatory schemes to ensure that the acts of copying and reproduction via reprographic techniques, as well as the number of copies made, do not result in insurmountable economic losses for rightsholders. To avoid this, reprographic and photocopying devices are levied according to specific tariffs, and manufacturers are those entitled to collect the levies ultimately paid by users.

It shall also be mentioned that a similar flexibility is also provided within the field of databases, as well as for related rights. In this way, copies of performance works, broadcasts and fixations can also be made.

The exception for private copy is omnipresent in EU copyright law. Yet, differences amongst the national implementations concern the admissibility of digital and third-party copying; whether the copies can be made within a professional and business-alike environment and to which extent they can be enjoyed within a limited circle of people bounded by a certain degree of intimacy with the copyist. Sometimes, private copying is subordinated to purpose-based limitations and the number of copies that can be made is also limited. Other divergences regard the way rightholders are remunerated. Moreover, it can be ultimately said that the types of works that can be copied for private purposes constitute the major source of differentiation amongst national exceptions.

EXAMPLES

- Decompiling a software code to make it run on a specific operating system it was not conceived to operate on
- Make a copy of the software in case the original support gets lost, destroyed, damaged
- Save materials from a database and/or re-use it, within reasonable limits
- Run the software program according to its purpose
- Study how a software works in order to make it function at best, develop patches

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

DOS AND DON'TS

DO	DON'T
You can make a copy of a lawfully acquired DVD to watch it at home	You cannot make a copy of a protected work and resell it
You can download a copy of an article found on a legal database you are subscribed to keep it in your laptop for personal uses	You cannot circumvent the pop-ups of a website and access digital contents to make a private copy if technical measures prevent it.
You can photocopy the relevant passages of a previously purchased book to write your graduate thesis or keep the most relevant for you	You cannot make a digital copy of a protected article if you are not subscribed to the database and thus a "lawful user" of the original copy
You can scan a digital file protected by copyright if you have obtained lawful access to it and you are willing to keep it for private purposes	You cannot make a copy if you are a professional or a business-alike entity unless national law allows it.

PAY PARTICULAR ATTENTION TO:

- Most countries delimit the number of copies that can be made (**Austria, Latvia, Poland** and **Slovenia**) and the amount of work that can be copied (**Greece, Hungary, Italy, Lithuania** and **Sweden**). However, two counter-exceptions to the quantitative limit are envisaged for out-of-commerce works in **Italy** and **The Netherlands**.
    - In **Italy**, the quantitative limit does not apply if the work can be considered "rare", i.e., hardly impossible to be found in ordinary channels of distribution.
    - In **The Netherlands**, the quantitative limit does not apply if can be reasonably assumed that no new copies of the book will be available for sale in ordinary channels of distribution.
- Many countries exclude some types of works, apart from sheet music, that is generally excluded from the scope of the exception (**Austria, Bulgaria, Croatia, Denmark, Estonia, Finland, France, Hungary, Lithuania, Malta, Poland, Slovakia, Slovenia, Spain, Sweden** and **Italy**), although sometimes this rule can be overridden by contract (**Croatia**).
    - Beware that in **Italy**, the exclusion is so ample as to comprise works whose access can be provided by contract, as well as works available on a time-shifting basis.
- Several Member States add further operational conditions to the applicability of the exception (**Germany, Romania** and **The Netherlands**).
    - German exceptions, also including the one for private copy, are strictly use- and work-specific.
    - The Dutch exception for reprography is work-specific whilst the exception for private copy is only applicable for private practice and study.
- Some countries explicitly restrict or rather enlarge the array of beneficiaries so as to include (**Austria, Czechia** and **Slovakia**), also within the context of business activities (**Belgium**) or exclude (**Denmark, Italy, Latvia, Lithuania, Spain** and **Greece**) that third parties and legal persons can make copies on behalf of natural persons. In all the other cases, the issue remains undetermined or the national exception sticks to the EU model, according to which the exception explicitly addresses "natural persons".

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Notice that in **Czechia**, individuals are also allowed to make fixations and alter computer programs and databases, other than reproducing them for private purposes. Thus, it can be noted that the exception extends to acts made for private purposes other than private copying yet always excluding public display (e.g., playing sound recordings amongst owners of a CD is not covered by the exception). The exception also explicitly covers a high number of works.
- Notice that in **Estonia and Greece**, rightholders are exceptionally not remunerated. In the same country, a tailormade provision allows to make copies of specific works for education and scientific research, to be conducted in private.
    - Notice that in **Portugal** remuneration is excluded if copies are made for the benefit of disabled persons.
- Notice that in **France**, the law explicitly states that technical measures eventually posed by rightholders on their work shall not interfere with the exception for private copy.
- Beware that in **Ireland**, the exception has not been implemented yet. However, a specific exception allows that recordings via broadcasts and cable programs are played at home or strictly within other domestic premises in order to reproduce protected works on a time-shifting basis and display tv programs within a restricted circle of people. Other conditions of applicability can be set by law.
- Notice that in **Slovakia**, private copies can also be freely distributed for non-commercial purposes.
- Beware that in some cases (e.g., **Sweden**), the law specifies that the source of the work to be reproduced must necessarily be lawful.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

TEMPORARY REPRODUCTIONS

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

With the advent of computers, digital technologies and the Internet, the right of reproduction has been progressively extended to cover also temporary acts of copying. However, it became immediately evident that this could severely hamper the operation of basic Internet functions (e.g., browsing, cache copying for easy and fast navigation) and the functioning of several technological processes, which may entail of one or more transient reproductions of protected works. Subordinating such processes to the consent of copyright owners, and possibly also to compensation, could have either blocked them or imposed severe burdens. To avoid this, the EU legislator introduced in 2001 an exception for temporary reproduction, which all Member States were obliged to implement. Apart from very limited divergences, national rules are mostly identical.

This exception allows making copies that are (i) transient, (ii) incidental, (iii) with no economic relevance, and (iv) an integral and essential part of a technological process, and (v) have the sole purpose of enabling the use of a protected work or a transmission by an intermediary between third parties. All these conditions should be present in order for the copy to be deemed as "lawful". Also, a human intervention in the process is allowed, provided that the five main characteristics of the reproduction are maintained.

EXAMPLES

- You can make cache copies of documents on the desktop of your laptop without infringing copyright over the documents at issue.
- Temporary reproductions of images displayed on websites can be allowed while browsing.
- Transient copies of small parts of databases can be made in order to support the development of an updated app for mobiles and similar devices.
- Temporary copies of codes of computer programs can be made for repairment and/or in order to ensure the improvement of the hardware.

DOS AND DON'TS

DO	DON'T
Make sure that the duration of the reproduction is limited to what is necessary for the proper completion of the process	You cannot extract an independent economic advantage from the transient copy
If you are making a cache copy in order to be transmitted to a third party during an intermediation process, you should make sure that third parties are able to receive it.	You can keep the copy after the process is finished, unless it is unusable outside of the technological process that has generated it
If you reproduce the code of a database or a computer program, to develop its technology you shall ensure that such copy is included in the technological process at stake and/or is integral part thereof	You cannot make a digital yet transient copy a cinematographic work which has been in turn pirated by a friend of yours on BitTorrent
	You cannot interfere with the process beyond what is necessary to initiate and terminate it

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

	You cannot interfere with the copy/information conveyed

PAY PARTICULAR ATTENTION TO:

- Do not think that this flexibility covers any temporary reproduction! It has quite a narrow scope and the five conditions should be all present for your use to be lawful.
- Beware that sometimes, the nature of the work to be copied excludes in itself the possibility of reproducing them on a temporarily basis, such as in **France** with regard to extracts from recordings of tv programs, that have an independent economic value and can always be reproduced on a time-shifting basis.
- Notice that many national exceptions are almost and slavishly reproduce the EU text in copyright laws, apart from very few cases.
- Notice that in **Cyprus**, the transient copy does not necessarily have to be economically insignificant, nor it shall be necessarily made in a way that does not impact on rightholders' economic interests. In this regard, **Estonia** lowers the threshold in the sense that no commercial purpose shall be pursued.
- Beware that, in **Cyprus**, temporary copies can solely be made for three purposes: i) caching; ii) browsing; iii) ensuring the proper functioning of transmission systems.
- Beware that in **Cyprus** and **Portugal**, intermediaries shall not interfere with the process beyond the standard set by industrial practices in a way to extract data or additional information thereof.
- Beware that in **Czechia,** media is fixed as to temporary copies can solely be made via computer or other similar networks. Notice that, in the same country, as well as in **Lithuania**, the exception extends the subject matter so as to cover phonograms, performances, broadcasts and audiovisual fixations, that can also be copied on a temporary basis.
- Beware that in **Ireland**, specific uses of the transient copy are explicitly excluded (rental, lending, transfer and making available).
- Beware that in several countries, the subject matter is explicitly reduced, such as in **Croatia, Sweden** and **Malta**, where databases and/or computer programs are explicitly excluded from the scope of the exception. In other cases, the exception only applies to specific kinds of works (**The Netherlands**).
- Notice that in **Italy**, the exception is accompanied by the statement that rules affecting liability of internet service providers, with regard to the digital copyrighted contents they host, still apply despite the flexibility for temporary copies in force.
- Beware that in **Latvia**, the requirement of the transient character of the copy still applies yet implicit in the text of the provision.
    - Notice that in **Sweden**, case law also allowed the application of the exception for temporary copies to unlawful sources.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

EPHEMERAL RECORDINGS

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

This flexibility is usually destined only to broadcasting organizations. It allows them to make copies of protected works, fixed performances, phonograms and broadcasted programs, in order to broadcast them, provided that they do it by using only their own facilities, and that they destroy the copy after the use, unless it has a specific documentary value. The exception also operates with regard to the rights of producers of phonograms, performers, and producers of the first fixation of the work at issue.

National implementations differ on many aspects, and, above all, the array of permitted uses and types of works included within the scope of the exception. In addition, purpose-based limitations are sometimes set by national law. In this respect, cut off dates and other specific laws usually regulate the way copies of broadcasts are stored and archived, especially if they have a documentary value. In some cases, beneficiaries other than broadcasting organizations can make ephemeral recordings of broadcasts on their behalf and they should necessarily use their own facilities.

EXAMPLES

- A fixation of a radio session is used by a radio broadcasting organization for its own purposes.
- A phonogram is used by a tv broadcasting organization to record part of a soap opera that is on the verge of being transmitted in Italy.
- A recorded fragment of a previously transmitted movie is ephemerally recorded by a tv broadcasting organization to later re-transmit it again on its channels.

DOS AND DON'TS

DO	DON'T
As a broadcaster, you can use your own facilities, or the facilities of a third party under your supervision	You cannot go beyond what is necessary for the purpose of broadcasting
You can use any awful source to make a copy of broadcasts	You cannot store the copy beyond what is necessary or in contrast with cut-off dates if set by national law, unless it has a documentary value, and in any case if you have not checked that you are not actually allowed to keep it as it you should give it to an archive or other dedicated institution
You can keep the copy as long as it is necessary, especially if it has a documentary value	You cannot make ephemeral recordings if you are not a broadcasting organization and the like

PAY PARTICULAR ATTENTION TO:

- Beware whether your country excludes particular works from the scope of the exception (e.g., **Finland** and **Malta**).

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Notice that in **Croatia**, the array of permitted uses is extended so as to cover the retransmission, broadcasting and public display on ephemeral recordings, also on internet service providers, provided that rightholders approve it and are adequately compensated.
- Beware that in **Romania** and **Slovenia**, only one copy is allowed.
- Notice that in **Portugal**, there conditions of applicability are absent.
- Beware that in **Romani**a, rightholders are entitled to remuneration.
- Notice that in **Belgium**, the array of beneficiaries extends beyond broadcasting organizations, so as to comprise anyone acting on their behalf.
- Check how long the copy can be kept according to your national law, as many countries (e.g., **Estonia, Hungary, Poland, Lithuania, Romania** and **Germany**) set cut off dates.
- Check which conditions, if required, your national law imposes as to the documentary, artistic and other value the copy shall have in order to be kept (e.g., in **Denmark**, **Luxembourg** and **Slovakia**, rules for storage and archiving are set by the Ministry of Culture and/or, more often, by law), and whether you are allowed to keep it, or you should handle it to other archives etc. (e.g., that in **Italy**, storage is permitted to the extent it is necessary)
- Beware that **Austria, France, Ireland** and **Greece** do not feature this exception.
- Notice that, in **Cyprus** and **Estonia**, the lack of conflict with rightholders' economic interests is not explicitly required.
- Notice that in **Denmark, Latvia** and **Italy**, it is not required for works to be ephemerally recorded by the beneficiaries' own facilities.
- Beware that in **Italy**, modes of performance and recording mediums are fixed by law.
- Beware that, in **Czechia**, the possibility of storing works of documentary value is not mentioned.
- Beware that in **Finland**, only parts of broadcasts can be retransmitted in a way that this does not alter the original broadcast.

Notice that in **Sweden**, the purposes of ephemeral recordings are fixed by law in the broadest sense, so as to include the possibility of making copies of broadcasts to give evidence of the contents of a broadcast or to facilitate the supervision of public authorities over broadcasting organizations. In this sense, storage for a limited period of time is also allowed.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

INCIDENTAL INCLUSION

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

The exception or limitation for incidental inclusion is present only in some Member States, and with very different features and requirements.

It is conceived to allow the reproduction and inclusion of parts of a protected work in another independent material, insofar as they do not play a key role therein. The independent material can afterwards be distributed and/or communicated to the public. None of such acts require the authorization of rightholders.

National implementations usually follow the EU threshold in a slavish manner. Yet, many countries are yet to implement this exception or did it in a reductive way. The only relevant condition of applicability that national laws pose concerns the necessity for the work included to be collateral. Beyond that, national exceptions mostly diverge with regard to the way works included can be further used and the subject matter falling within their objective scope.

EXAMPLES

- Some photographs are shown in a movie
- Excerpts from a literary work are cursorily read during a TV program
- Extracts from newspaper articles about the Ukrainian War are incidentally included in a documentary about geopolitics
- Parts taken from academic articles are incidentally included in a book discussing literature about a scientific quandary that attracts the interest of multiple scholars nowadays.

DOS AND DON'TS

DO	DON'T
You must make sure that the protected work you include plays a minor, collateral role	You cannot use unlawful sources

PAY PARTICULAR ATTENTION TO:

- Beware whether national law covers all works or only specific categories (e.g., films, newspapers, periodicals tv programs etc.), such as in **Cyprus, Denmark, Lithuania, Malta**, **The Netherlands** and **Finland**.
- Beware whether the country you operate in implements a particular concept of "incidental", such as, e.g., in **Austria**, where it means that the part(s) of work included are not autonomously recognizable.
- Notice that in many countries, the array of permitted uses is as broad as to cover acts of reproduction, making available, distribution and broadcasting by incidental inclusion (e.g., **Austria, Spain, Slovakia, Sweden** and **Germany**), or, alternatively, the extension can be limited to public display and related rights (**Croatia**).

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Beware that in **Croatia, Finland, The Netherlands, Sweden, Slovenia, Poland** and **Czechia**, the need for the work incidentally included to be collateral in respect of the final work is further specified.
- Beware that in **Spain**, the purpose of incidental inclusions needs to be informatory.
- Try not to confuse this exception with quotation or parody/pastiche.
- Beware that you do not find this exception in **Bulgaria, Croatia, Estonia, France, Greece, Italy, Latvia, Luxembourg,** and **Romania**. Moreover, not all countries covered all types of works under this exception. As an example, in **Belgium**, it corresponds to the exception for freedom of panorama as it only covers protected databases and works permanently located in public places). In this regard, notice that, in **Hungary**, incidental inclusion is only allowed for orphan works by CHIs. Likewise, in **Sweden**, the exception is limited to artistic works and, for this purpose, fragments of webpages containing images are excluded.
- Beware that, in many cases, incidental inclusion is permitted only if it does not endanger rightholders' economic interests (e.g., **Austria, Belgium, Denmark, Ireland**).

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

LAWFUL USES OF SOFTWARE AND DATABASES

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

The EU legislator and national laws shield from copyright protection several uses made by the lawful acquirers and/or possessors of a computer program or database. Each carve-out is conceived to make sure that the rights conferred do not prevent the exercise of prerogatives that are necessary for lawful users to properly enjoy the product, and at the same time do not prejudice the economic interest of rightholders nor the normal exploitation of the work.

In the field of **software**, a lawful acquirer can make permanent or temporary copies, translate, adapt, arrange, and alter in any other manner the program, distribute it and rent it, without authorization, every time this is needed to use the program in accordance with its intended purpose, including for error correction.

Lawful users are also allowed to make a back-up copy of the program for any legitimate purpose, and this privilege cannot be excluded by contract.

The person having the right to use a copy of the program can observe it, study it, or test its functioning in order to determine the ideas and principles which underlie any element of the software, if this is done while performing any of the acts of loading, displaying, running, transmitting or storing it. Also in this case, this privilege cannot be ruled out by rightsholders in their license agreements and the like.

Another key privilege attributed to anyone having the right to use the program, or another person acting on their behalf, is to make copy or translate the code every time this is indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs. However, this applies only if the information has not been previously made available. Reproductions and translations should be limited to the parts of the original program which are necessary in order to achieve interoperability. The information so obtain cannot be used for other purposes, nor can it be given to other, except when necessary for the interoperability of the independently created program. They cannot be used either or the development, production, or marketing of a program substantially similar in its expression, or for any other act which infringes copyright.

In the field of **databases**, lawful users can perform any act necessary to access the database and perform a normal use, and extract and re-use any insubstantial part of it.

EXAMPLES

- You can decompile a software code to make it run on a specific operating system it was not conceived to operate on.
- You can make a copy of the software in case the original support gets lost, destroyed, damaged.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- You can save materials from a database and/or re-use it, within reasonable limits.
- You can run the software program according to its purpose.
- You can study how a software works in order to make it function at best, develop patches.

DOS AND DON'TS

DO	DON'T
Databases: limit your use to what it is strictly necessary to enjoy the database according to its purpose	Databases: do not extract and re-use substantial part of the content
Software: maintain reproduction and translation of the code within the boundaries necessary for interoperability	Databases: do not perform repeated extractions and re-uses when the sum would become substantial
Software: respect the "up to what necessary" principle when you observe, study, and test a program	Software: do not distribute the backup copy
You can make copies of and alter a computer program if that is necessary for repairment and to correct errors	Software: do not use the information extracted for interoperability for any other purpose
You can perform any act on databases, software and computer program that allows to use them properly and ensure access	In no case use unlawful sources!

PAY PARTICULAR ATTENTION TO:

- Beware that, the program with which you are trying to reach interoperability should be independently created and not substantially similar to the protected one.
    - In **Bulgaria**, the requisite for the program to be independently created is absent.
- Beware because some countries limit the number of back-ups copies you can make (e.g., in **Lithuania, Slovenia** and **The Netherlands**).
- Check whether in your country the backup copy can be used only until the period of lawful use of the original copy of the software has not expired.
- Beware to understand how the notions of "substantiality" or "normality" of extraction and re-use of database content are interpreted in your country (e.g., **Germany** and **Lithuania** embrace a strict reading of "normal use" while in **Malta**, the principle of proportionality is recalled).
- Beware that flexibilities over databases have not been implemented in **Portugal**.
- Not all these exceptions are mandatory, thus is some countries some of them can be overridden by contract.
    - For instance, some countries rule out the possibility for contracts to limit lawful uses of databases and/or computer programs (**Austria, Belgium, Bulgaria, Croatia, Denmark, Estonia, Finland, Germany, Greece, Latvia, Lithuania, Poland, Malta, Portugal, Romania, Slovenia, Spain, Italy, Luxembourg,** and **Sweden**), whilst others do not (**Cyprus, Czechia, France, Hungary, Ireland, The Netherlands,** and **Slovakia**).
        - Beware that in **Austria**, although lawful uses cannot be waived, the "intended use" of databases can be further limited by contract.
        - Beware that in **Poland**, rightholders can reserve their rights over software.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Beware that some countries delimit the array of permitted uses, such as, e.g., **Bulgaria** and **Greece**, that prohibit reproductions respectively of software and electronic databases, or, in the case of **Czechia, The Netherlands** and **Ireland**, additional conditions of applicability are imposed.
- Notice that some countries restrict or enlarge the array of beneficiaries, also opening to anyone acting on behalf of lawful users (e.g., **Cyprus**).
- Beware that in **Malta**, the types of works included in the contents of databases that may be accessed are specified.
- Notice that in **Sweden**, passive storage of a computer programs, as well as acts of making a copy, after the expiration of the license was not held infringing.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

PARODY

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

Parody allows to make humor or mockery by taking inspiration from a protected work, in a way that the parody is significantly different from the original as it conveys a different message, although related to the original one. In general, this exception plays a fundamental role in enhancing artistic freedom and, more generally, to shield freedom of expression against the censorship that could be surreptitiously exercised by copyright owners.

The exception or limitation for parody makes it possible to borrow and modify without asking the authorization of the author or other rightholders, parts or the entirety of a work protected by copyright to convey a humorous message by satiric or ironic imitation. Recently, added flexibility for parody comes from the duty of digital platform to ensure that digital works of parody are not removed for the sake of copyright protection. Yet, this flexibility is far from being implemented in several Member States.

The kind of message conveyed by a parodic act and its aim may vary in a consistent manner. A parody may entail a mere comment, a critique, or rather convey a specific political opinion or propaganda, but it may also just aim at making fun of something and do bare entertainment. While some years ago the objective pursued by the parody mattered, now the humoristic or mockery trait is enough to justify the use of a protected work, no matter the final aim.

In some countries, copyright laws cover parody together with caricature to caricature (ironic and satiric imitation that targets a real person or a fictitious character) and/or pastiche (ironic and satiric imitation of a style usually targeting a collection of different works). In other countries, pastiche or satiric works are excluded from the scope of the exception. In addition, few Member States delimit the aim that the parody can pursue, the amount of use through purpose-based limitations or encroach the subject matter by adding further specifications or operational conditions. It is worth noting that a high number of countries does not envisage a general exception for parody, in spite of allowing the same degree of flexibility through other provisions for transformative or derivative works or delimiting the exception for parody to the online world.

EXAMPLES

- You use a famous painting or picture to make a meme
- You take a song and change the lyrics to advance a political argument, move a critique against someone or something, make fun etc.
- You can alter a highly recognized comic in order to do mockery about it
- You can write and play a satiric comedy by taking inspiration from a well-known Shakespearian dramatic work

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

DOS AND DON'TS

DO	DON'T
You can use a fragment of a musical work as this is the only one necessary to make your parody	You cannot slavishly copy a protected work without any significant change or without an element of mockery in your reuse
You can use a work to make a parody provided that there is an element of humor or mockery in your reuse	You cannot convey discriminatory messages through humoristic works, as well as works of satire, parody, and pastiche
You can use a work to make a new one that is noticeably different from the work you are making a parody from	You cannot abuse of your freedom of expression through works of parody, as parody does not mean you can violate fundamental rights of others!
You can use a dramatic work that criticizes society to make a stand-up comedy that conveys the opposite message of the original work	You cannot take inspiration from a literary work to make another novel that should be a parody but, instead, it conveys the same message of the original work

PAY PARTICULAR ATTENTION TO:

- Beware that **Bulgaria, Denmark, Italy, Sweden** and **Austria** do not feature an exception for parody in black letter law, although case law admits it. Rather, in **Cyprus, Greece, Portugal** and **Finland**, there is no reference to this exception at all.
    - However, in **Austria**, **Sweden** and **Denmark**, copyright law explicitly allows to make available and reproduce online digital works of parody, caricature, and pastiche via digital platforms. In **Bulgaria**, a similar flexibility for online parody is going to be implemented soon within the text of national copyright law.
    - Beware that in **Denmark**, the degree of flexibility for parodies and works of pastiche or caricature admitted in case law is very low, as a work can be deemed a parody only if the same is made in connection with the text.
    - Notice that in **Finland** and **Sweden** some room for flexibility for parodies and similar works can still be ensured through an exception tailormade for derivative works of any kind, in a way that the degree of flexibility can also be higher than an exception specifically devised to cover works of parody, pastiche and caricature.
    - Beware that in **Italy**, case law embraced an extensive interpretation of the amount of use that is allowed for the purpose of making a parody, since there are not restrictions in this regard except for a clear indication of the degree of artistic value of the new work in relation to the original one. The only important factor is that the parody shall convey an independent message if compared with the original work.
- Beware that in **Belgium**, **Luxembourg, The Netherlands** and **Lithuania,** compatibility with undefined "fair practices" is required.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

  - The yet to be transposed exception for online parodies in **Finland** is also going to require compatibility with fair practices.
  - Notice that in **The Netherlands**, a parody about terrorism and drugs was deemed compatible with fair practices, showing that Dutch courts read this requirement in a particularly restrictive manner.

- Beware that in **Croatia**, indication of the source is required.
- Beware that in **Croatia, Romania, Spain** and **Latvia**, pastiche is excluded from the scope of the exception.
  - Beware that in **Slovenia** and **Spain**, flexibility for pastiche is limited to the online world and subject to stringent conditions.
  - Beware that in **Spain**, flexibility is so reduced so as to exclude also caricature from the scope of the offline exception.
- Beware that in **Lithuania** and **Luxembourg**, a purpose-based limitation is explicitly mentioned, so as the parody shall make use of the original work only to the necessary extent.
- Beware that in **Latvia**, **Portugal** and **Poland**, there is still no mention about the implementation of flexibilities for online parodies.
- Notice that in **Czechia** and **France**, the case of parody has been brought before the Constitutional Court, that emphasized the link with freedom of expression as a constitutional guarantee.
- Beware that in **France** and **Luxembourg**, it has been explicitly stated in case law that works of parody shall by no means discriminate against the original work or underpin its value. Rather, it must only entail a humoristic intent.
- Notice that in **Germany**, the exception for parody, pastiche and caricature involves a broad array of permitted uses, such as transformative uses of the original work, distribution, and reproduction. Exploitation and public display are also allowed, provided that author authorizes them.
- Beware that in **Malta**, the array of permitted uses and the subject matter are restricted so as parody is only admitted with regard to audiovisual, literary, music or database works, that can only be reproduced and communicated to the public for the purpose of parody, pastiche, and caricature.
- Notice that in **The Netherlands**, parodies of commercial nature are also admitted, as case law allowed the make use of a work to make a parody within the context of competition between firms (e.g., use of a work within an advertisement to make mockery about the products made by a competing firm), provided that the parody does not create confusion amongst different products in the eyes of consumers.
  - Beware that also in **Romania, Slovenia, Spain** and **Slovakia**, confusion between the original work and the parody is enlisted among the operational conditions to apply this exception.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

QUOTATION

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

To quote parts of a work to criticize it, comment on it, refer to or build on it in an argument represents a basic exercise of freedom of expression. If copyright owners were given the possibility to block such uses, they would be in the position to silence criticism, and ultimately to exercise censorship.

To avoid these abuses and, more generally, to make sure that citing excerpts of a work without hampering its economic exploitation remains outside the scope of copyright and can be done without asking the authorization of rightholders or paying remuneration, an exception to allow quotation has been introduced by national legislators since the very early days.

Quotation is the only mandatory exception provided into the oldest international copyright treaty, the Berne Convention of 1883. Much before the intervention of the EU legislator, all Member States had this provision in their laws. Ultimately, an exception for quotation was introduced in 2001. Later, the same became mandatory and internet service providers shall ensure that digital users are not deprived of the possibility of enjoying the exception online.

Today, the quotation exception can be used to insert excerpts of a work in another work or subject matter, provided that several conditions are fulfilled. Generally, the quoted work should be published or otherwise made already lawfully available to the public. The author of the work and the original source should be acknowledged. Quoting should entail the intention of entering a dialogue with the quoted work, and in some countries, it should be done for specific purposes, such as criticism, review, discussion, or illustration, (although such purposes can be understood as merely indicative and not to be interpreted strictly). The amount of work quoted should not go beyond what is necessary for the purpose. Last, some Member States require compliance with local fair practices.

Usually, all types of works can be quoted, but some countries circumscribe the scope of the quotation exceptions only to certain categories of works or exclude others. In addition, the amount of work is sometimes delimited.

EXAMPLES

- An excerpt of a literary work is quoted and commented upon in a literature review
- Pieces of a musical work are embedded as a quote into an audiovisual work to make a review
- Parts of a scientific works are cited to review them and criticize them in a presentation displayed during a symposium of scientists and other scholars sharing the same topic
- A relevant passage is extracted from a previously published academic article to quote it and further discuss the divergent positions of the academic literature about a specific topic in a critical way in order to write a working paper
- A famous phrase taken from a popular book can be used to introduce a conference which concerns a related topic

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Music lyrics can be reproduced in a tv program on MTV in a way that the new summer hits can circulate for advertising purposes

DOS AND DON'TS

DO	DON'T
You can quote excerpts from a book to write a literary review if the two works are related, the source of the work and the name of the author are indicated	You cannot quote excerpts from a book beyond than those relevant passages that are necessary to criticize the style and writing technique
You can use fragments of a scientific article for a presentation before an audience of students about the same topic	You cannot copy a book and quote it in a literary review
You can quote excerpts from the music lyrics written by Bob Dylan for a biopic about his life and best songs	You cannot quote substantial parts of a published academic article to write your own if the two are about the same topic and they can compete on Google Scholar
You can quote and publicly read seminal extracts of famous bestsellers in a circle of amateurs to discuss and criticize them collectively	You cannot quote relevant passages of a newspaper article for commentary without mentioning the source of the work and the name of the author
You can comment on passages of a paper as discussant in a conference about intellectual property law and the challenges posed by technological development	You cannot quote excerpts of a magazine about a specific topic in a work that does not relate to the quoted work whatsoever

PAY PARTICULAR ATTENTION TO:

- Notice that in **Austria**, works published also without the author's consent are included within the scope of the exception.
- Beware that some national laws provide limits as to the amount that can be quoted (fragments, short passages etc.), such as in **France, Lithuania, Poland, The Netherlands, Romania, Spain, Sweden** and **Czechia**, although the concept of "small work" is frequently interpreted in a broad way yet always put in correlation with the fixed purpose, as underlined by the judiciary in **Poland** and **Slovenia** solely with regard to specific types of works.
    - In **Slovenia**, to quote some kinds of works in their entirety, such as photos and other works in pictorial form, it is necessary to ensure compliance with constitutional law. In general, the amount of work that can be quoted in accordance with the fixed purpose is to be assessed on a case-by-case basis.
- Beware that several countries specify which types of work can be lawfully quoted. Some apparently limit the exception to literary, scientific, and artistic works (**The Netherlands**), others mention also audiovisual, musical and databases (**Malta**), or graphic and photographic works (**Poland**), or also works of fine art, architecture, applied art, industrial design, and cartography (**Slovenia**). In **Spain**, only fragments of literary, musical, and audiovisual works, as well as isolated figurative or photographic works can be quoted.
    - In **Spain**, also some newspaper articles, press revies and journalistic works can be held as quotation, unless rightsholders have not reserved their rights and provided that the same are remunerated.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Beware that, if required, conformity with "fair practices" has a precise and different meaning in each country.
    - In **Ireland** this requirement is absent.
- Beware that some countries list the nature of works which may be quoted, rather than referring to the purpose of quotation.
    - In **France** quotations shall be "justified by the critical, polemic, educational, scientific or informative nature of the work in which they are incorporated".
    - In **The Netherlands** it is possible "to quote from the work in an announcement, review, polemic or scientific treatise or a piece with a comparable purpose".
    - In **Czechia**, quotations can be made for any professional purpose.
- Notice that in **Denmark, Finland, Ireland, Slovakia, Sweden** and **Estonia**, neither the purpose nor the kind of works that can be quoted are specified.
    - Beware that in **Finland**, there is also a work- and use- specific exception for quotation yet subject to purpose-based limitation, allowing to make copies of previously published artistic works for scientific presentations, as well as for periodicals and newspaper articles associated to a current event.
- Notice that some national laws also allow quotation for other purposes than review and criticism, such as for teaching and scientific research (**Belgium, Italy**, **Latvia, Luxembourg, Poland**, **Portugal, Romania, Spain,** and **Croatia**) or in a more articulated (**Poland**) and sometimes stringent manner (**Germany**).
    - In **Germany**, purpose is fixed according to the subject matter, so that only excerpts of a scientific works can be included in an independent literary work for illustration and only passages of music works can be included in an independent music work.
    - In **Italy**, also the exchange of suggestions and opinions is considered within an "educational scope" and therefore covered by purpose of the exception for quotation.
    - In **Poland**, the list of purposes is so broad that works can be quoted for "explanation, polemics, critical or scientific analysis, or artistic genre", as well as for scientific and educational purposes in the case of anthologies and textbooks. When works are quoted for educational and scientific purposes, remuneration is due.
- Notice that only **France, Hungary, Malta,** and **Germany** implemented Article 17(7) CDSM, according to which internet platforms shall avoid depriving internet users from the possibility to quote protected contents online.
- Notice that, in some countries, the exception for quotation also extends to other uses, such as distribution and public display in **Germany** and **Malta**, also covering fixation and broadcasting in **Latvia**. In **Lithuania, Malta, The Netherlands** and **Luxembourg**, quotation can also be made in translated form.
- Beware that few Member States devise exemplary lists of permitted quotations (e.g., **Latvia**).
- Beware that in **Lithuania** and **Portugal**, the quotation must be inserted in a work that does not create confusion with the original work quoted.
    - In **Portugal**, the judiciary underlines that the quotation shall be "occasional, brief, and does not exceed the limits imposed by law in a manner that undermines rightholders' interests".
- Beware that in **Poland**, the quoted work must play an ancillary one when it is included.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Notice that in **Slovakia**, acknowledgment of the source is not required.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

FLEXIBILITIES FOR CULTURAL PRESERVATIONS, ACCESS AND REUSE

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

To prevent copyright from becoming an obstacle to dissemination of culture, several flexibilities were introduced to further access, preservation, and restoration of culture heritage by specific entities pursuant to public tasks. As a result, several provisions were designed to enhance the dissemination of cultural works by specific entities in charge of promoting related objectives.

While not specifically envisaged to foster access to culture, the Info Soc Directive enacted in 2001 still plays a key role in this by allowing the reproduction of protected works by publicly accessible libraries, educational institutions, archives, and museums (recognized as "CHIs") on a non-profit basis. More specifically, in 2017, the EU legislator introduced an exception allowing CHIs to use works in a way to ensure the preservation, restoration and protection of cultural heritage works within their collections. The same rule also allows the reproduction in digital form when this is necessary for the afore-mentioned purposes and revenues can also be extracted solely to cover the costs of digisitation.

Instead, two tailormade EU provisions were devised for specific categories of works: (**i**) orphan and (**ii**) out-of-commerce works. These provisions have a strong culturally promotional flavor as they aim at removing copyright barriers and repeal the difficulties with licensing specific works.

Flexibilities for orphan works are contained in the Orphan Works Directive (OWD). This set of provisions enables CHIs and public broadcasting organizations within EU to reproduce and make orphan works available to the public in connection with public interest-led goals. The types of works included within the scope of the exception can be found in the EU text (e.g., cinematographic, audiovisual, written works such as journals, articles, books, magazines, and other collective works of the same kind), that also mandates to follow specific procedural steps in order to qualify a work as "orphan". An "orphan work" is a work whose rightsholders cannot be identified despite a diligent search highly deregulated by EU law. Thanks to these rules, orphan works can be freely used, catalogued, and indexed for preservation and restoration purposes, as well as reproduced to store them into digital archives.

By the same token, another exception specifically allows CHIs to reproduce and make out-of-commerce works available on non-profit basis for restoration and preservation purposes if no collective license has been concluded for the same uses. A work can be deemed "out-of-commerce" when it cannot be found in ordinary commercial channels, or this can be presumed in good faith. As in the case of orphan works, this rule aims at removing copyright barriers to dissemination of CHI collections, that, in this way, can be used and accessed by everyone for non-commercial purposes.

National implementations diverge on (**i**) the array of beneficiaries within the subjective scope of the exceptions; (**ii**) the number of permitted uses; (**iii**) the types of works sheltered by such flexibilities;

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

(**iv**) the purpose-based limitations, that can be differently articulated than those included in the EU text. In fact, additional conditions or specifications are sometimes added on a national basis.

PRESERVATION OF CULTURAL HERITAGE

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

Under EU copyright law, an exception is expressly dedicated to cultural heritage preservation. A broad list of specific entities (named as "CHIs") including archives, museums, libraries, film and audio heritage institutions is allowed to make (also digital) copies and make protected works available to the public only to guarantee the storage, preservation, and restoration of CHI collections. As an example, if a unique masterpiece is missing or becomes deteriorated, an archivist or a librarian can make a digital copy to ensure that its collection is kept unaltered.

This provision is featured by a strict purpose-based limitation, as it allows specific culturally relevant institutions to store copies of protected works solely to ensure the preservation of their collections and replace missing or deteriorated pieces, in order to promote the public interest in preserving cultural heritage. The objective is to ensure preservation also through mass digisitation of CHI collections as a propaedeutic step to fuel access to culture in the digital era without clashing with copyright and mass-licensing burdens.

National implementations mostly differ on the array of permitted uses, as some further the flexibility as to include distribution and communication to the public while others, conversely, delimit the number of copies that can be made. Moreover, several national exceptions feature a closed list of works or beneficiaries, like, e.g., providing that the array of CHIs included within the exception must be prescribed by law.

EXAMPLES

- Decompiling a software code to make it run on a specific operating system it was not conceived to operate on
- Make a copy of the software in case the original support gets lost, destroyed, damaged
- Save materials from a database and/or re-use it, within reasonable limits
- Run the software program according to its purpose
- Study how a software works in order to make it function at best, develop patches

DOS AND DON'TS

DO	DON'T
An archivist can make a copy of a protected photo to keep it in a digital archive containing masterpieces of famous photographers	An archivist can make a copy of a protected photo to keep it in a digital archive containing masterpieces of famous photographers
A protected painting can be made freely available to the public by the owner of a museum	A protected painting can be made freely available to the public by the owner of a museum

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

A librarian can request and obtain a digital copy of a manuscript as the original went deteriorated	A librarian can request and obtain a digital copy of a manuscript as the original went deteriorated
An archivist can make a copy of a protected photo to keep it in a digital archive containing masterpieces of famous photographers	An archivist can make a copy of a protected photo to keep it in a digital archive containing masterpieces of famous photographers
A protected painting can be made freely available to the public by the owner of a museum	A protected painting can be made freely available to the public by the owner of a museum

PAY PARTICULAR ATTENTION TO:

- Beware that several countries are yet to implement this exception and the same uses are usually covered in part by other provisions, although frequently more restrictive either in terms of objective scope, like **Belgium**, **Bulgaria**, **Luxembourg**, **Poland**, **Romania** and **Czechia**, by delimiting the number of copies and the types of works; either in terms of subjective one, such as in **France**, **Ireland**, **Slovakia**, **Sweden** and **Finland**, that only address a reduced number of beneficiaries. Others are restrictive in both terms, such as **Greece**, **Slovenia**, **Latvia** and **Denmark**, where the array of permitted use is also further limited.
- Check if your country, like **Denmark** and **Latvia**, adds further conditions such as the circumstance that the copy of the work at issue is not easily purchasable on the market. Conversely, you can let your guard down if, like in **Austria** and **Ireland**, this exception cannot be overridden by contract.
- Check if your country, like **Lithuania**, also requires the citation of the source or the name of the author.
- Notice that in **Austria**, this exception has a particularly broad scope both in terms of beneficiaries and permitted uses.
- Beware that in **Estonia**, individuals and public authorities are also directly allowed to make or request copies and CHIs have added room for flexibility in the case of replacement of missing or destroyed elements within their collections.
- Notice that **France** and **Hungary**, the flexibility respectively extends to the communication to the public and distribution. Similarly, in **Germany** and **Ireland** alterations of works required by their technical features are also allowed. As an example, movies can be reproduced by a film heritage institution in a format of higher quality, in order to ensure conformity with the technological development of the film industry.
    - Notice that in **Spain**, also other institutions than CHIs can make copies on behalf or under their responsibility

USES BY CULTURAL HERITAGE INSTITUTIONS

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

The EU legislator devised an exception for specific institutions committed to the dissemination of culture, such as schools, libraries, museums, and archives. Yet, the primary objective of this

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

flexibility was not ensuring cultural heritage preservation. Rather, it was designed to promote access to culture within the premises of specific entities, overcoming the obstacles created by copyright and without overcompensating rightsholders. This exception is particularly useful within the context of digitalization, as, e.g., it avoids that librarians must pay for each digital copy of a protected book they are eager to make to preserve their collection. The same can be said for the copies of protected works consulted within the premises of schools, archives, and museums.

National implementations of the EU rule show a high degree of fragmentation. The list of works included within the objective scope significantly differ from one Member State to another. The same is to be observed with regard to the array of beneficiaries, that are usually less than those mandated under the EU text. There is also high variety in the number and kind of permitted uses within the scope of the exceptions, as many cover only reproductions, whilst others also allow public performance and communication to the public. In this regard, it must be noted that many of these provisions are right-, work- and/or subject-specific.

EXAMPLES

- A copy of a copyrighted book is obtained and kept by a school library to be freely consulted by students and used by teachers for lectures
- A copyrighted play can be freely rehearsed by students also before a public made by their parents, relatives, and caregivers
- Academic articles can be stored within the digital archive of an academic institution and freely consulted by researchers through a secured network

DOS AND DON'TS

DO	DON'T
You can visualize a digital copy of an academic article from a university library	You cannot download a digital copy of an article from an academic library and keep it for you outside from its premises
While strolling in a school library, you can freely access a book chapter stored therein	You cannot make a copy of a photo stored in an archive if you are not the archivist
As the owner of a museum, you can freely make a digital copy of few paintings stored therein to prepare a catalogue or promote an exhibition to be held in the future	You cannot download a copy of a book accessed through the technical equipment provided by an academic library to university students and resell it
Within school premises, you can freely rehearse a school performance by reading the lyrics of a popular copyrighted song	A librarian cannot distribute passwords and other electronic facilities in a way that everyone can access the entire collection of literary works in digital form outside from its premises
As a teacher, you can freely read and distribute script of a famous play to students involved in a school performance	You cannot bring a copy of a newspaper article taken from a public library with you

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

PAY PARTICULAR ATTENTION TO:

- Beware that some Member States devised this exception only for conservation and preservation purposes, like **Slovakia**, **Sweden**, **The Netherlands** and **Luxembourg** (except for songs and movies), as well as **Poland**, **Romania**, and **Latvia** (also delimiting the number of copies), or for exhibitions, such as **Ireland** and **Greece**.
- Notice that a high number of countries provided a flexibility specific for performances within the premises of school alike entities: **Latvia, Lithuania, Bulgaria**, **Poland** and **Italy**; **Germany** and **Austria** (only broadcasts and the like), **Estonia** (also other institutions); **Czech Republic** and **Belgium** (for any use within the school).
- Beware that few national flexibilities only operate if a copy is not easily purchasable on the market (**Latvia**), whilst **Finland** and **Sweden** a non-exclusive license for uses for cultural purposes that may further flexibility.
- Beware that in **Portugal**, compensation is required except for some public entities that can freely create fixations of works having exceptional documentary interest.

ORPHAN WORKS

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

Works whose rightsholders are non-identifiable are systematically under-accessed, undermining the dissemination of a high number of cultural products. Thus, the Orphan Works Directive introduces an exception specific for these works, referred as "orphan", that can be reproduced and communicated to the public by specific entities in charge of culturally relevant and public interest-led roles. These institutions are the sole authorized to reproduce, also in digital form, and make orphan works available to achieve their public interest-related missions.

The objective is broader than the one devised under the exception for cultural heritage preservation. In fact, the OWD goes beyond the mere preservation of cultural works yet addressing specific works (works published in written form such as books, journals, newspapers, magazines, as well as cinematographic, audiovisual works and phonograms) whose rightsholders are non-identifiable despite a "diligent search". After that several procedural steps and registration duties are met and the status of orphan work is conferred, the work at issue can be reproduced on a free-of-charge basis by the beneficiary institutions, provided that rightsholders do not cease to be un-identifiable and ask for its termination. In this case, they are also entitled to compensation for the losses due to the unauthorized exploitation.

National implementations do not diverge significantly except for slight differences about (**i**) the array of beneficiary institutions; (**ii**) whether and to which extent Member States chose to add further conditions of applicability, such as cut-off dates; (**iii**) remuneration schemes and methods, as beneficiaries are entitled to extract revenues for the expenses sustained to digitize and make orphan works available to the public.

EXAMPLES

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Decompiling a software code to make it run on a specific operating system it was not conceived to operate on
- Make a copy of the software in case the original support gets lost, destroyed, damaged
- Save materials from a database and/or re-use it, within reasonable limits
- Run the software program according to its purpose
- Study how a software works in order to make it function at best, develop patches

DOS AND DON'TS

DO	DON'T
You can freely read a book stored in a digital library if the copyright holder is non-identifiable	If you are not an archivist, a librarian, or the owner of an audio or film heritage institution, you are not authorized to take care of orphan works and show them to the public
As the owner of a film heritage institution, you can collect orphan movies to create your own collection and promote the dissemination of little-known movies	As an archivist, you cannot put a videogame in your collection before that a diligent search of the copyright holder has been conducted by specific entities and according to the procedural requirements and steps set by national law
As the owner of a museum, you can exhibit an orphan painting to be admired by foreign visitors	As the owner of a museum, you cannot organise an exhibition of orphan paintings to extract profits beyond the ones necessary to cover the expenses sustained to organise the event
You can freely consult an orphan novel kept in the collection of a school library	If the copyright holder of a literary masterpieces pops up, as the owner of the library where the same is stored, you shall put it out from your collection and stop showing it to the public without consent
You can freely digitise excerpts of old newspaper articles whose rightsholders are nowhere to be found in order to keep record of old press in a digital archive open to the public	You cannot show to the public a novel extracted from a personal diary that the author would have almost certainly wanted to keep secret As the user of a digital library through subscription, you cannot download an orphan novel and resell it

PAY PARTICULAR ATTENTION TO:

- Beware that only **Austria** enlarges the array of beneficiaries to any publicly accessible institution that collect works, whilst the majority reduces it by imposing that some or all beneficiary institutions shall be prescribed by law, such as **Poland**, **Slovakia** and **Sweden** or are, at least, partially identified with specific entities (**Estonia**)
- Check if in your country there are cut-off dates that reduce permitted uses (**Czechia** and **Hungary**), and the type of works (**Denmark**), also affecting the amount of revenues that beneficiaries can extract (**France**) to cover the expenses of digitisation and making available.
- Notice that in **Estonia**, **Ireland** and **Finland**, the exception also includes respectively computer programs and databases in the former two countries, sound recordings and recordings of performances in the latter.
- Beware that in some countries, like **Greece**, the purpose-based limitation is more articulated, also sometimes explicitly including educational purposes, like in **Germany**.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Notice that in **Latvia**, orphan works can also be made available via wire or in any other way individuals can access them on a time-shifting basis.

OUT-OF-COMMERCE WORKS

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

As in the case of orphan works, works that are unavailable within the ordinary channels of commerce suffer from under-access and copyright risk being an insurmountable obstacle to their dissemination. In this case, further obstacles are posed by the very same circumstance that, contrary to orphan works, out-of-commerce works are not available to the public. To cope with this and thus increase the size of CHI collections, the EU legislator provided an exception allowing CHIs to reproduce, distribute and make these works available to the public, provided that some reasonable effort has been put in ascertaining that the same are not sold through the customary means of distribution. This exception applies only if a license is not in force for the same uses, thus it operates on a subsidiarily basis. For this reason, CHIs must firstly ascertain whether the works at issue are not licensable on a collective basis and register the information about the out-of-commerce works they are eager to use in the official portal. In addition, CHIs must always cite the source of the work and the name of the author, and they can only make out-of-commerce works available on non-commercial websites. Hence, this exception enables CHIs to make digital copies of out-of-commerce books to display them on an online archive including copies of works exclusively within their collections or to organize an exhibition within their premises on a not-for-profit basis.

National implementations differ on (**i**) the number of beneficiaries, (**ii**) the types of works, as well as (**iii**) on whether and to which extent additional conditions are to be fulfilled to deem the work as out-of-commerce, such as cut-off dates after which a work is presumptively out-of-commerce and divergent concepts of "unavailability".

EXAMPLES

- Once ascertained that a collection of out-of-commerce photos is not licensable on a collective basis, the same can be freely digitized and exhibited in a museum.
- After trying hard to search for an unpublished novel in ordinary channels of distribution and assessed that it cannot be licensed, the same can be freely digitized to be put in a digital library.
- A flyer dated to 1922 that is not sold anywhere and cannot be licensed can be exhibited in the national library for the sake of historical and documentary interest

DOS AND DON'TS

DO	DON'T
On behalf of an audiovisual archive, you can freely digitise a collection of unavailable jazz songs to have them freely recorded by internet users on its official website	If an old article can be licensed by a sufficiently representative organization within your country, you cannot make a copy to put it in a digital collection

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

On behalf of a digital library, you can make copies of a little-known unavailable novel to make it available for users online	If you are not part of a cultural heritage institution you cannot take care of an out-of-commerce work
On behalf of a cinematographic heritage institution, you can make copies of film works to make them freely available in its official website	Although a little-known novel is generally recognized as "out-of-commerce" as it is very rare to find it in commercial channels, you cannot freely use it if you can still purchase it in two websites and very few online second-hand shops.
On behalf of a museum, old videogames unavailable for sale can be exhibited to be freely tried by amateurs	As an archivist, you cannot digitise a photo and deem it as "out-of-commerce" before putting some effort to ascertain if that is still available for sale
On behalf of a national museum, you can digitise excerpts from old press articles and magazines to avoid their deterioration or loss due to their poor-quality original format	You cannot digitise a collection of out-of-commerce old newspaper articles to sell it through an e-commerce website

PAY PARTICULAR ATTENTION TO:

- Beware that many countries are yet to implement this exception, and national laws do not have any other flexibility for out-of-commerce works (**Greece** and **Portugal**). However, in some cases, other exceptions can also cover at least some of these uses (**Latvia**), yet solely for preservation purposes or up to a certain extent due to cut-off dates (**Slovenia**). Alternatively, non-exclusive licenses are in place (**Slovakia** and **Sweden**).
- Notice that in the **Republic of Malta**, after than years from the date when it was purchased for the first time a work is automatically held out-of-commerce.
- Beware that in some countries (e.g., the **Netherlands**) the applicability of the exception is excluded yet its wording does not mention clear criteria.
    - Beware that in **Poland**, the array of beneficiaries is reduced as some are to be set by law and there are also significant limitations concerning the types of work

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

INFORMATORY PURPOSES

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

Sometimes, the public interest wins over copyright interests. This is the case of the set of EU provisions, for the most slavishly implemented in national laws, dedicated to the free reproduction and display of protected works for informatory and related purposes. Two exceptions were devised to fulfil public interest-related goals, ultimately rooted in freedom to impair, and receive information.

The first exception allows to reproduce and freely display articles and other subject matter concerning religious, political, economic, and other current hot topics, that shall be outlined for the sake of the public interest in acquiring further knowledge in this regard. The same flexibility is also extended to related rights. In this way, excerpts from copyrighted works about seminal current events can be freely quoted, copied, and illustrated in public, in order to further explain current events of crucial importance, provided that the act has a purely informative nature, and the name of the author is indicated if not impossible.

With the same rationale, a second exception allows the reuse of parts of public speeches held before governmental bodies, assemblies, and other public authorities, as well as parts of public lectures. In both cases, the source of the work shall be mandatorily mentioned if possible, and the protected works at issue shall be used only to the extent required by the purpose of further informing the public.

These provisions are widely implemented in national laws. Yet, some divergences concern the amount of work that can be used, the subject matter included and the array of permitted uses. Sometimes, the purpose-based limitation is also articulated in a more stringent manner in a way that several national exceptions appear to have been conceived as strictly context- and use-specific.

PRESS REVIEW AND NEWS REPORTING

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

It can be imagined that, once that the crack of Wall Street became a burning issue in 2009, fragments of previously published economic articles were multiply quoted in the daily press of that time to disseminate the opinion of highly recognized scholars, in a way that does not differ significantly from the way valuable opinions of virologists were circulated at the peak of the Covid-19 pandemic.

To enhance the circulation of economic, religious, and political articles and press news concerning a current event of cruciality for the local or the global community, copyright barriers are lowered down to promote a more compelling public interest. In alternative, censorship would be encouraged, in a way that would hamper freedom of expression in a consistent manner.

For this reason, an exception covers both for news reporting and press review. The same allows the reproduction and making available of these specific works (articles and press news about hot topics, such as important economic, religious, political issues and the like), so as the informatory purpose

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

is fulfilled, and the name of the author is indicated if not impossible. The flexibility is also extended to related rights.

National implementations highly differ regarding the type of works that can be copied and displayed to the public, as well as to the array of permitted uses. Beneficiaries are usually not specified as in the EU rule. It shall be noted that several countries have two exceptions, one for news reporting and one for press review, subject to different restrictions and conditions of applicability. In few cases, national exceptions also require remuneration.

EXAMPLES

- Excerpts of a published article are recalled during a tv program about persons who have suddenly disappeared to go back to the origins of the event at issue.
- Excerpts of a book about the economic crisis are quoted by a politician to support his/her arguments during the political campaign.
- Excerpts of a published scientific article of a virologist are reproduced to be explained and discussed in a tv program about the consequences of the pandemic on global health.

DOS AND DON'TS

DO	DON'T
Fragments of old tv programs can be reproduced and used to fix a documentary of historical interest about national politics	You cannot use an excerpt of a published academic article to write an editorial on a crucial event related to that subject matter if the scholar prohibited so
You can take a phrase or other assertive passages from a book to report a current event	You cannot re-use an entire book that has a reporting nature as it delves into a hot political topic, for a tv program in a way that is likely to impact on the market of such book in the long term
You can make a copy of a scientific article to be displayed and publicly read during a tv program about COVID-19 pandemic and its consequences on the global economy	You cannot use an excerpt of an old newspaper article to write another one or conduct a tv program about the same current event, because new relevant facts on the matter occurred after a long time
You can freely use fragments of copyrighted magazines about the fashion industry to show the way it was affected by the rise of influencers for a documentary about an influencer	You cannot use fragments of an old newspaper article about a shocking event occurred a long time ago which shows analogies with a murder that has recently frightened your local community to write an articulated article of historical fashion without mentioning the source of the old newspaper article and the author's name
You can use relevant passages of academic articles written by famous scholars to speak about the dramatic political situation we are in during a political talk show	You cannot use a musical work to talk about a terroristic attack backed by religious motifs during a radio session as such musical work is unlikely to be strictly connected with the current event at issue.

PAY PARTICULAR ATTENTION TO:

- Beware that some countries explicitly impose that the works reproduced shall not constitute the main content of the new work where they are included (**France**, **Estonia**).

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Beware that, it is generally taken for granted that the work is used in the amount that is strictly necessary to fulfil the informatory purpose.
- Notice that the exception for quotation is also sometimes extended to cover these uses (e.g., **Luxembourg**).
- Beware/notice that
    - in **France, Latvia, Poland** and **Ireland**, the exception tailormade for press review restricts the array of beneficiaries so as to include only journalists in the former two cases and those prescribed by law in the last two.
    - In **The Netherlands**, the definition of "press" is so broad as to include any form of constantly updated offline and online media.
- Notice/beware
    - that in **Czech Republic, Cyprus, Croatia, Hungary, Ireland, Latvia, Lithuania**, **Malta, The Netherlands, Poland, Romania, Slovakia, Slovenia, Spain**, rightsholders can reserve their rights.
        - In **Poland**, reservation can also be expressed in simplified form by the publisher.
        - In **Slovakia**, the Constitutional Court held that reservation in the case of photos can be delimited to prioritize freedom of expression and inform people about a current event.
    - In **Portugal** and **Luxembourg,** rightholders cannot reserve their rights.
- Notice/beware that
    - **Belgium**, **Romania, Sweden** and **Lithuania** only address specific types of works also, in the case of **Romania**, explicitly reducing the amount of work that can be used.
        - In **Sweden**, excerpts from protected works can also be included in a scientific presentation.
    - **Luxembourg, Slovenia** and **Poland** do not specify the subject matter, that does not necessarily have to be about political, economic, and other hot topics concerning current events.
        - In **Poland**, it is rather specified that short summaries, comments, and photos taken by photo reporters and reporters are also included.
    - In **Denmark** and **Sweden**, works devised to be used in newspaper articles and periodicals are automatically excluded from the scope of the exception, whilst, in the Danish case, works for reporting listed under specific law are anyway included.
    - In **Slovenia**, speeches in the form of a recorded interview can also be included in press release if otherwise reporting would be less effective.
- Beware that in **Austria**, the work must be used in connection with the event reported.
- Notice that in **Germany, Malta, Romania, Slovakia** and **Croatia**, distribution and, in the case of **Malta**, translation are also permitted.
- Notice that **Finland** and **Sweden** feature a specific exception for the reproduction and reuse of excerpts of tv programs and explicitly allows the use of works to report current events in films, radio and tv broadcasts.
- Notice/beware that

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

  - in **Estonia**, the concept of "current event" is specified in a broad manner by the judiciary, in a way to comprise any historical event whose importance is renewed because of new facts.
  - In **Poland**, the informatory purpose is satisfied only if the document at issue has a "reporting" function, or commonsense regards it as "press".
- Beware that in **Romania**, compliance with fair practice is additionally required.
- Notice that in **Slovenia**, the source of the work can be indicated also through a YouTube link and a statement specifying that the same was removed from there.
- Beware that in **Germany, Spain** and **Slovenia**, remuneration is also required, at least in certain cases.
  - Notice that in **Sweden**, mention of the source is not required.

USES OF PUBLIC SPEECHES, LECTURES ET AL

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

Anyone is the proprietor of his/her own public speech, whether it was held during a political campaign before the public, or before another governmental body, such as during parliamentary sessions. In all these cases, as well as within the context of court trials, administrative proceedings, and any other public assembly involving public authorities, those who are called to speak in public are also those who retain their rights over their speeches. Yet, for the sake of freedom of expression, these public speeches may be of public interest in increasing knowledge about momentous circumstances for a specific community. Similarly, excerpts from speeches held during a public lecture may be of general interest as anyone is entitled to the right to culture.

An exception is devised for the purpose of enhancing both these nuances of freedom of expression. Thanks to this, speeches held during parliamentary sessions, court trials and political campaigns that usually inflame the audience, can be freely reused, quoted, and reproduced, witnessing the triumph of freedom of expression against censorship.

Moreover, the same flexibility also allows to recall parts of speeches held in the course of seminal public lectures before an audience made of students and researchers. Specifically, it enables anyone to make copies and illustrate parts of public speeches and lectures before an audience only to the extent required by the informatory purpose, provided that the name of the author, as well as the source of the work, are both indicated if this does not turn out to be impossible.

In general, national implementations adhere to the EU threshold. Yet, some exceptions restrict the array of beneficiaries, add further conditions of applicability or are, most of the times, strictly context specific.

EXAMPLES

- Part of the public speech held by John Fitzgerald Kennedy after the fall of the Berlin Wall can be copied and used to fix an historical documentary

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Excerpts from the public speech held by Nelson Mandela when he became President of South Africa at the end of the apartheid regime can be read during a public lecture to recall landmark historical events.
- Excerpts from a public lecture held by Benedetto Croce in Pisa can be reproduced in a biopic.

DOS AND DON'TS

DO	DON'T
You can use extracts of some of his public speeches in written form to speak about the biography of Donald Reagan during a public lecture about the history of American politics	You cannot use fragments of a public speech for a documentary without mentioning the source of the work and/or the author of the speech.
You can copy and paste relevant passages taken from Abraham Lincoln's public speeches to write his biography	You cannot record part of the public speech held by Barack Obama when he was first elected President of the United States to sell it to a ghostwriter working for other politicians.
You can make a copy and reuse parts of the public lectures of famous physicians to write a collective work about physics of complex systems and active matter	You cannot make a copy and reuse recorded fragments of a public lecture held by Enrico Fermi to prepare a scientific presentation before an audience of students without respect of the moral rights of the author in question
You can freely record and play excerpts from public speeches held by American politicians during an English class both to increase students' language skills and their knowledge about current affairs in USA	You cannot make copies of a public speech held by a figurehead just for fun and without any informative intent
You can use excerpts of the public speeches held by Queen Elizabeth II for a TV program after her death	You cannot make a copy and reuse excerpts from a pleading held in court by a lawyer to write your own pleading as a practicing lawyer

PAY PARTICULAR ATTENTION TO:

- Notice/beware that
  - **Austria, Germany, Latvia, Malta, Slovakia**, **Spain** and **Croatia** explicitly broaden the array of permitted uses, so as to cover distribution, broadcasting, translation and communication to the public.
  - **Cyprus** restricts the array of permitted uses, so as to cover solely recitation in public or re-broadcasts of published literary works.
  - **Sweden** restricts the array of permitted uses in a way that they cannot be reproduced via radio and tv broadcasting, as well as in the case there are confidentiality obligations set by agreement or law.
- Beware that some countries specify the array of contexts where speeches shall be held in order to be covered by the exception (**Belgium, Croatia, Finland, Slovenia, Estonia, Denmark**).
- Beware that the subject matter within the concept of "public speech, lecture and the like" can be read in a restricted (**Denmark, Spain** and **Portugal**) or, more often, in a broad manner (**Germany, Finland, Latvia, Lithuania** and **Greece**).

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

    - Beware that in **Spain**, speeches made at corporate meetings and parliamentary sessions are not included within the scope of the exception.
- Beware that few Member States do not have an exception for public speeches, yet the same uses are usually covered by the general exception for press news (**Estonia, Slovenia** and **Romania**) or the one for quotation (**The Netherlands** and **Portugal**), although delimiting the array of permitted uses in a consistent manner.
- Beware that in **Finland, Poland, Sweden** and **Luxembourg**, authors retain the right to publish and alter their statements.
- Beware that in **Italy**, only speeches delivered in political and administrative proceedings are covered by the exception and the same can be reproduced or displayed only if the source of the work, the place and date of the speech are indicated.
- Beware that in **Portugal**, the beneficiary is identified with media and the use must not create confusion with the original work.
- Notice that in Sweden, acknowledgment of the source is not required.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

USES FOR PEOPLE WITH DISABILITIES

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

Oftentimes, protected works are not accessible for people with disabilities. An individual with visual impairment needs a text in Braille language, or a text-to-speech software to read aloud a digital file. People with hearing impairments need subtitles to enjoy audiovisual works. Transforming a protected work stored on a traditional medium into an accessible work may require its reproduction, alteration, and later communication/making available to the public – all acts that are covered by copyright. This means that the creation of an accessible work requires the authorization of the copyright holder and possibly the payment of a remuneration.

As a result of such obstacles, for long the number of protected works in accessible format has been very low, particularly in low-income countries. This was the reason why the EU legislator has decided to introduce special flexibilities for people with disabilities already in 2001, supplemented and broadened in 2015 with the Marrakesh Directive (implementing the WIPO Marrakesh Treaty).

Therefore, the exception for uses for the benefit of people with disabilities introduced in 2001 is flanked by a broader flexibility contained in the Marrakesh Directive, which is not overridable by contract. This provision covers a wide array of permitted uses (reproduction, fixation, and alteration to make the works easily accessible to disabled people, communication to the public, including use and extraction of databases and computer programs, lending, renting, public performance, broadcasting, and related rights). In addition, the Marrakesh Directive imposes several conditions of applicability, such as the necessity to keep the original work unaltered, to use the work in respect of TPMs eventually posed by rightsholders and in accordance with their economic interests. Hence, rightsholders are entitled to remuneration.

Thanks to this set of provisions, in all EU Member States the right to take part in cultural life of people with disabilities is balanced with copyright through one or more exceptions, which allow disable individuals to transform protected works in accessible format, and authorized entities to produce and distribute them to people with various forms of disabilities. In addition, accessible format works can be also exchanged by authorized entities, also belonging to different Member States, under certain conditions, thus decreasing the costs to be faced for their production. Yet, authorized entities should comply with several obligations and requirements set by law (transparency, records keeping, prevention of privacy etc.).

The broader Marrakesh exception, which can be used also by authorized entities, cover only people with visual impairments and printed works. More general national exceptions, which allow only disabled individuals and people on their behalf to produce accessible works for personal use, may cover also other forms of disabilities. In general, it can be said that national exceptions do not diverge significantly from the EU benchmark. Very slight differences can be found in the set of prerogatives entitled to authorized entities and disabled persons, as well as about the array of beneficiaries and the forms of disability covered by the various national exceptions.

EXAMPLES

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- A person with disabilities may have a printed book reprinted in Braille or digitize it and read it via text-to-speech software.
- A library can produce accessible copies of protected works and distribute and/or give access to its disabled users, also via digital platforms.
- An association taking care of visually impaired people can make digital copies of books to distribute them to disabled persons in an accessible format.

DOS AND DON'TS

DO	DON'T
You can make any technical or other modifications necessary to produce an accessible format copy of a work	You cannot make a digital copy on behalf of disabled persons to resell it or extract any profit thereof
You can import/export accessible format copies for the benefit of beneficiary persons	You cannot use the works in ways which are excessive, disproportionate, or not linked to the degree of disability
You can make copies, also in digital format, distribute and make them available to the public in accessible formats on behalf and to disabled persons	You cannot make any use of the work if you are not disabled, anyone acting on behalf of a disabled people or an authorized entity
You can lend to the public copies in accessible format	You cannot endanger the integrity of the original work, nor make any change which is not necessary to make it accessible in relation to the specific disability in question
You can publicly perform any protected work for the benefit of disabled people	You cannot use the exception to freely digitise, distribute and display copies of protected works in accessible format to disabled people if the copyright holder has already made that format commercially available upon reasonable terms

PAY PARTICULAR ATTENTION TO:

- Check whether in your country you must pay remuneration to rightholders, and in which cases (e.g., **Denmark, Sweden** and **France** provide remuneration only under certain circumstances), as only few Member States outright exclude it (e.g., **Bulgaria**, **Croatia, Estonia, Latvia, Slovenia**).
- Under the general disability exceptions, who the beneficiaries are
    - only some forms of disabilities are usually covered, such as, most of the times, visual and hearing impairment (e.g., **Greece**, **Latvia** and **Sweden**), whilst in other cases, the definition is broadly articulated, opening the door to other forms of disability (e.g., **France** and **Ireland**), or needs to be prescribed by law (**Italy**);
    - in some countries having a more restrictive approach, a disabled person may be required to certify their state to benefit from the exceptions (**Poland**), or third parties cannot use works on his/her behalf (**Italy**);

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

  - authorized entities often only benefit from the Marrakesh exception! So, pay attention to limitations as to protected works and uses covered.
  - Notice that in several Member States, the array of beneficiaries is extended (**Czechia**) so as to cover other entities for specific uses and "anyone" for specific uses/types of works (**Sweden**).
    - in **Czechia**, broadcasting organisations can add audio descriptions to certain tv programs to make them accessible to people with visual impairment.
    - In **Denmark**, governmental and municipal institutions, as well as other non-profit entities can make copies of tv programs and other works to make them accessible to visually and hearing-impaired persons.
    - In **France**, CHIs (archives, publicly accessible libraries, and archives), as well as legal persons can also use protected works, make copies, and publicly display them on behalf of disabled people.
    - In **Sweden**, libraries and other organizations committed to the benefit of disabled people on a non-profit basis are identified with authorized entities and have many prerogatives (dissemination, reproduction, communication to the public) with regard to a broad list of specific works.

- Beware because some countries introduce specific exclusions about the subject matter (e.g., musical works and sound recordings, sound and image recording etc.), such as **Denmark**, **Finland**, **Germany, Italy, Lithuania** and **Poland**, where modes of reproduction and distribution are set by law for specific works.
- Beware because there may be quantitative limits to the number of copies (**Poland**) or additional conditions are set in relation to the number of copies (**Sweden**), as well as with regard to permitted uses.
  - Beware that in **Poland,** use is permitted only to the extent accessibility to disabled people is ensured.
  - Beware that in **Slovenia**, only unsubstantial adaptations are allowed.
  - Beware that in **Sweden**, recording is not allowed and remuneration is due if more than one copy is made.
- Check whether your country requires to provide precise information about the original work (**Ireland**) and its author (e.g., **Estonia, Lithuania,** and **Ireland**), as well as whether additional informatory requirements and responsibilities pending upon authorized entities are needed (e.g., in **Lithuania** and **Sweden**, procedures for the exchange of copies are strictly regulated by law).
- Notice that in **Finland**, the number of prerogatives entitled to authorized entities is particularly broad, so as to allow them to lend, sell and use the copies as such.
  - An expansive approach towards permitted uses for the benefit of disabled persons can also be found in **Malta**.
- Notice that in **France**, publishers of textbooks are compelled to authorize their digisitation for the benefit of disabled people after ten years of publication.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

USES BY PUBLIC AUTHORITIES

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

Both EU and national copyright laws provide tools to balance copyright with the public interest in protecting public security, ensuring the proper functioning of administrative, judicial, and parliamentary proceedings, and contributing to the success of civil or religious ceremonies. These provisions are directed to allow the use of protected work in con texts such as criminal investigations, works in parliaments or local councils, activities of the public administration, events organized by religious groups or public authorities, and so forth, without the need to ask for the authorization of rightsholders. In most of the cases, such uses are gratuitous, i.e., they do not require the payment of any compensation to rightsholders.

Usually, these exceptions or limitations are attributed to specific entities or individuals, in the light of the role they play and the public interest they pursue (e.g., public entities, security forces, administrative bodies, media outlets, judiciary, national/local legislative councils etc.). In limited instances, they do not specify their beneficiaries, so they can be used by anyone who pursues the goals the provisions are conceived to protect.

While the EU legislator has proposed three exceptions for uses by public authorities, not all Member States have followed up on this. As a result, some countries provide flexibilities for public security, official events, and the operation of judicial and administrative functions, others featuring exceptions that address only some of these conflicting interests.

Against this patchwork of national solutions, it is always advisable to verify which flexibility has been implemented in your country and what its scope and extent are, for there is no harmonization in the EU. In a snapshot, and with some generalization, this is the state of implementation of the three categories of exceptions/limitations for uses of/for public authorities in Member States.

National implementations highly diverge on the array of permitted uses and contexts where these flexibilities can be applied. Moreover, several Member States add other conditions of applicability, such as strengthening purpose-based limitations and sticking to a literal interpretation of the array of beneficiaries. Ultimately, it shall be noted that the exception allowing the use of works for religious ceremonies and other events held by public authorities is generally non- or under-implemented.

EXAMPLES

- An excerpt of a copyrighted official document can be used during parliamentary sessions in order to streamline lawmaking processes.
- Extracts from pleadings can be requested and obtained by the parties of a court trial to find effective arguments in order to strengthen their positions at the next hearing.
- Official documents, protected by both copyright and trade secret law can exceptionally be used to ensure public security in the case of terroristic attacks.
- Recorded extracts of a one-to-one interview with a repentant of mafia can be used if new facts related emerge in order to prevent further bloodshed.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Excerpts from protected works, such as oral speeches held by religious authorities under specific circumstances, can be reproduced during religious rituals of the same kind.

DOS AND DON'TS

DO	DON'T
You can display excerpts of official documents to public authority to protect public health	You cannot make copies of excerpts of public documents in an amount that is not necessary to cope with the threat to public security at stake
You can distribute excerpts of speeches held by religious authorities during a religious ceremony	You cannot make copies of excerpts of public documents held during a hearing in court in order to use them in another judicial proceeding
You can make copies of official documents in paper to discuss the best options with other prominent figureheads appointed to elaborate a legislation	You cannot display documents of a judicial proceeding to other people beyond those involved in the proceeding at stake
You can make copies of administrative documents related to tax law, in order to complete an administrative proceeding	You cannot disseminate the documents containing the proposals elaborated by scholars in a commission appointed to elaborate a new legislation outside from the national parliament
You can quote excerpts from the pleading held by the counterparty to counterrespond to the arguments adopted thereof in a hearing	You cannot make copies of excerpts of ritual sermons held by religious authorities to use them in other contexts apart from the religious ceremonies for which they were initially conceived

PAY PARTICULAR ATTENTION TO:

- Beware that many countries lack reference to public security so as delimiting the exception for uses in parliamentary, administrative, and judicial proceedings (Cyprus, Estonia, Greece, Hungary, Italy)
- Notice/beware that in some countries the array of permitted uses is enlarged so as to include distribution and public display (**Germany, Malta**), also to third parties if the documents are public (**Ireland**), whilst others reduce it.
- Beware that in **Italy** and **Lithuania**, acknowledgement of the source is mandatory.
- Beware that several national exceptions are strictly context specific so as to delimit the array of permitted uses through additional conditions of applicability.
    - In **Czechia**, public authorities shall strike a proportionality test on a case-by-case basis to evaluate whether right to information is to be prioritized over copyright in the specific case.
    - In **Denmark, Slovakia, Slovenia** and **Hungary**, the governmental bodies, and types of proceedings where documents can be reproduced and displayed is specified in detail.
        - In **Slovakia**, governmental meetings are also covered by the exception.
    - In **Finland**, a peculiar formula allows everything that serves to exercise the statutory right to obtain information with regard to a public document.
    - In **Greece, Sweden** and **Hungary**, the purpose-based limitation is specified (e.g., giving evidence in the Hungarian case) and sometimes particularly restrictive (e.g., only administration of justice and public safety in the Swedish case).

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

  - In **Italy** and **Slovakia**, the purpose of reporting is not mentioned.
  - In **Romania**, conformity with fair practices is required. In addition, works shall not be used in a way to negatively affect the economic interests of rightholders.
- Beware that
  - **Cyprus**, **Finland, Luxembourg, Slovenia** and **Ireland** do not envisage an exception for religious ceremonies and other uses, or events held by public authorities.
  - Only in **Belgium**, the exception for judicial, administrative, parliamentary proceedings and uses for public safety has not been implemented.
  - In some cases, the exception for other uses by public authorities is strictly use- and context-specific.
    - **Croatia** features an exception specific for public institutions undertaking teaching related activities.
    - **Denmark** features an exception, excluding dramatic and cinematographic works, allowing performances of protected works yet not via radio or tv both within religious and educational events without fees to be paid in order to be admitted.
    - **Germany** provides an exception for the reproduction, distribution and making available of short and excerpts of literary and music works to be included in other collective works to be used solely during religious ceremonies. Yet, in these cases, rightholders shall be remunerated.
    - **Hungary** provides a broad exception allowing religious communities, as well as amateur artistic groups, to perform works at events held during national holidays provided that the use of protected works is not for profit and in a way that is compliant with international treaties. Likewise, **Slovakia** also extends the flexibility devised to cover uses at religious ceremonies to national holidays and related events.
    - **The Netherlands** features an exception that solely allows the use of works during background music during a service. Likewise, **Portugal** allows public performances of national songs with religious character at related ceremonies.
    - **Sweden** envisages an exception for performances of published works in any context where the performance is not the primary purpose, teaching and religious services included.
- Notice that some countries explicitly allow uses of protected works in arbitrations and other alternative dispute resolution mechanisms (**Croatia** and **Germany**).
- Beware that several Member States exclude some types of works, such as collections (**Croatia**), computer programs (**Italy**), dramatic and cinematographic works (**Sweden**), whilst others explicitly include databases (e.g., **Luxembourg, Malta, Romania,** and **Sweden**), unpublished works (**Poland**), or specify the subject matter (**The Netherlands, Sweden,** and **Spain**) in a univocal manner.
  - In **Sweden**, only oral statements, and public speeches, as well as documents displayed in a way to comply with specific law can be used for public security or the administration of justice.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

- Notice that in **Denmark**, the array of beneficiaries is enlarged so as to allow parties of public proceedings to request and obtain a copy of the official documents concerning them, while in **The Netherlands**, anyone acting on behalf of public authorities can use protected works for the public interest.
- In **Denmark**, official documents can also be officially recorded under the approval of the Ministry of Culture.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

PUBLIC DOMAIN

WHY DO WE NEED IT, AND WHAT CAN WE DO WITH IT?

The concept of public domain refers to the collection of all the intangible materials and works which are not object of intellectual property and, consequently, can be freely used due to different reasons, as the expiration of the legal terms of the copyright protection or the nature of the works concerned. The scope of the inclusion of a work into the public domain, and the resultant exclusion of its privatization, can be found in the need in a democratic society to foster freedom to create and innovate, to have access to culture and information, and to preserve a common heritage. Apart from France, Ireland and Luxembourg, each EU member state include in its legislations one or more dispositions to exclude singular works or intellectual elements from the possibility assigned to copyright owners to exercise their rights.

EXAMPLES

- Legislative or judicial texts are excluded from copyright protection
- Principles and mathematical methods can be used by anyone
- Works on which copyright has expired can be freely used

DOS AND DON'TS

DO	DON'T
The use of documents and acts which can be referrable to official spheres, as legislative, administrative or judicial texts, is permissible	When something is not a mere idea, but an expression, its use is not permissible
The use of ideas and concepts, as principles, methods, discoveries, scientific theories, mathematical formulas, statistical diagrams, mere data, is permissible	
The use of daily new, facts, information provided in the press, is permissible	

PAY PARTICULAR ATTENTION TO:

- In **Bulgaria, Croatia, Czechia, Estonia, Greece, Hungary, Lithuania, Slovakia**, and **Slovenia** there are specific disposals which exclude from the copyright protection also works of traditional folklore
- The distinction between the concepts of "idea" and "expression" are difficult to interpret and require a case-by-case analysis: e.g., in Slovenia the concept of a television show is considered an expression, in Poland an idea
- Slovakian law provides that whoever is authorized to conduct business and uses a literary, scientific or artistic work that is free from copyright, is obliged to pay a contribution for each use of the work.

ReCreating Europe

The future of EU copyright flexibilities

Policy recommendations

Authors

Caterina Sganga, Peter Mezei, Delia Ferri, Noelle Higgins

EXECUTIVE SUMMARY

These policy recommendations stem from the comparative mapping and assessment of EU and national sources on copyright flexibilities, and the analysis of the impact of private ordering sources on the copyright balance, performed by *reCreating Europe* between January 2020 and June 2022. The research, which relied both on in-house desk mapping of available sources and on the contribution of a wide network of national experts from academia and private practice, produced a wealth of data and findings, which have been systematized and structured in an internal dataset, and will be made available to the public on the user-friendly website copyrightflexibilities.eu in early Fall 2022. A report, entitled "Copyright flexibilities: mapping and comparative assessment of EU and national sources" and published in July 2022, provides an overview, commentary and comparative analysis of the datasets, drawing descriptive conclusions that constitute the backbone of these policy recommendations.

The mapping of EU legislative sources confirmed the presence of promising steps forward in the harmonization and independent construction of copyright flexibilities. Yet, a number of flaws keep on affecting their regulation. Among the most problematic issues, it is worth highlighting the conceptual fragmentation and "clusterisations" of exceptions, limitations and other balancing tools; outstanding gaps in their coverage; the contemporary presence of multiple regimes that hampers legal certainty; the outdated nature of several provisions; and the difficulties in tackling such shortcomings due to the rigidity of the system. The mapping of national sources showed a full reception of EU Directives and Regulations, the alignment of the majority of Member States around the exceptions and limitations provided by the InfoSoc Directive, but at the same time the non-homogeneous reception of CJEU doctrines by national courts. The analysis of the CJEU case law revealed an uneven coverage of the various flexibilities and a similarly fragmented framework, yet with a remarkable impact on some optional exceptions and the development of landmark autonomous doctrines that are reshaping the EU copyright system. Comparative reports confirmed the scenario depicted by previous legal mappings with regard to the fragmentation of national solutions. However, the study also highlighted the presence of positive instances of convergences and increasing flexibility, while recent experiments of introduction of mandatory exceptions have proven largely successful in terms of harmonization and achievement of greater legal certainty across the Union. On the contrary, areas not covered by the EU harmonization still present moderate to very high degrees of fragmentation, strongly calling for an intervention by the EU legislature. The research allowed reaching detailed conclusions on the state of the copyright balance for each of the 11 areas of copyright flexibilities examined.

The mapping of private ordering sources showed that users are granted a more limited range of flexibilities, with substantial limitations as to users' freedoms and prerogatives, lack of procedural flexibilities and guarantees (especially related to the notice-and-take-down and complaint-and-redress mechanisms), and an asymmetric protection of interests of platforms and rights holders over the flexibilities guaranteed for end-users, and no substantive change in the approach after the transposition of the CDSM Directive, but a clear prevalence of United States' substantive rules on the fair use doctrine and the DMCA-compliant procedures over the newly introduced EU rules.

On the basis of these findings, it is possible to formulate the following policy recommendations.

In general:

- Reconsider the approach to harmonization for all copyright flexibilities
- Simplify the E&Ls regimes and ensure consistency in the rationales underlying their adoption
- Introduce purpose-oriented provisions to overcome rigidities
- Channel into legislative provisions key doctrines developed by the CJEU to increase legal certainty
- Consider introducing horizontal provision that allow a joint update of traditional E&Ls to new technological, market and socio-cultural developments
- Specify the notion of protected work and harmonize exclusions
- Evaluate the opportunity to introduce flexibilities for transformative uses

On specific flexibilities:

- Move towards a greater harmonization of the private copy and reprography exceptions for seamless cross-border activities and management by CMOs
- Build on *Deckmyn* and Article 17(7) CDSM to move towards a greater harmonization of the parody exception
- Transform the quotation exception in a rule of maximum harmonization
- Adapt the flexibilities for informatory purposes to the new online information industry
- Introduce a general mandatory research exception
- Align EU copyright law with the EU policies on open access and open science
- Conduct an impact assessment after the full CDSM transposition to verify the need to streamline traditional and digital teaching exceptions
- Clarify the treatment of lending of electronic books and other protected works in digital format after the CJEU decision in *VOB*
- Move towards a greater harmonization of flexibilities for cultural uses in order to foster cross-border cooperation and boost a wider development of common cultural policies
- Broaden the scope of flexibilities for cultural uses to move beyond mere preservation purposes, introducing mandatory exceptions for, e.g., access and re-use
- Embrace a wider notion of disability in copyright law and harmonize related exceptions across the EU, beyond the limits of the Marrakesh Directive
- Leverage on the combined effect of the disability copyright exception and EU accessibility legislation

Addressing vulnerability by better coordinating EU copyright law with broader EU cultural and social policies:

- Address underlying structural barriers that affect access to digital culture and ultimately render copyright flexibilities less effective
- Support translation of cultural content into minority languages
- Support education in and awareness of audience development strategies to promote democratization of culture

On private ordering:

- Review the language/terms of platforms' EULAs to reach a better balance
- Review the non-compliance of OCSSPs with the novel public regulatory sources
- Coordinate Article 17 CDSMS with international private law principles
- Reconsider the legal status of UGC

INTRODUCTION

These policy recommendations stem from the research conducted in the framework of *reCreating Europe*'s work package 2, devoted to the impact of EU digital copyright law on end users and access to culture, and of its task 2.1, entitled "Comparative and EU cross-national mapping of regulatory and private ordering sources".

Task 2.1 performed an unprecedented comparative EU and cross-national mapping of public and private regulatory sources on legitimate uses and flexibilities, with an emphasis on the effects of the reforms triggered by the Digital Single Market (DSM) agenda. The task encompassed a two-layer comparative EU and cross-national mapping and assessment of sources impacting on copyright flexibilities looking at (a) statutes, court decisions, governmental policies, practices and schemes, in the field of copyright law, DSM, and broader cultural policies, and (b) private ordering sources, such as standardized end-user license agreements (EULAs) and terms of use/service from online platforms, selected to represent a wide array of cultural and creative goods and services. The research built on a wide array of scholarly contributions, studies and reports commissioned by public institutions, and previous partial attempts of comparative mapping of copyright exceptions and limitations. The aim was to assess the real degree of harmonization and/or

fragmentation of EU copyright flexibilities; to identify which uses, purposes, rights and interests are balanced against copyright, and what is the absolute and comparative degree of flexibility of EU copyright law and Member States' laws vis-à-vis each of them; and, finally, to highlight regulatory enablers, obstacles and gaps impacting on the correct functioning of the copyright balance in the EU and its Member States. The two-phase empirical mapping of selected streaming service providers (with or without hosting functionality), online marketplaces and social media platforms' EULAs and terms of use etc was finalized to study their approach to copyright flexibilities and impact on users' rights and prerogatives, and to assess their legitimacy vis-à-vis the EU legislative framework both preceding and following the implementation deadline (June 7, 2021) of the CDSM Directive.

The research produced two main outcomes: (a) a final report, entitled "Copyright flexibilities: mapping and comparative assessment of EU and national sources" and published in July 2022, which illustrates and comments on the datasets and national and comparative findings generated by the research, drawing descriptive conclusions that constitute the backbone of these policy recommendations; and (b) an online database (www.copyrightflexibilities.eu), which is scheduled to be officially launched on 21 September 2022, grounded on a FAIRified MediaWiki structure, where the remarkable amount of data collected have been organized, classified and tagged so as to be easily searchable via several browsing option, and to generate user-friendly and catchy visualization, making the dataset interactive and accessible also to the broader public. Short explanations, glossaries and summaries, framed in a user-friendly website, will also help the user navigating the complexity and technicalities of the regulatory framework. In this light, the public database resulting from the legal mapping is expected to effectively sustain the overarching aim of *reCreating Europe* to tackle the main challenges EU digital copyright law is currently facing, i.e., its complexity, its growing relinquishment, and the consolidating awareness and knowledge gaps among policymakers and stakeholders.

Task 2.2 assessed barriers experienced by vulnerable groups in accessing digital cultural content. It linked *ex ante* the idea of vulnerability to structural inequalities deployed empirical research in the form of semi-structured interviews and a survey across 12 EU Member States: Belgium, Croatia, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Malta and Spain. The research produced two main outcomes: the Interim Report (D2.2), presenting initial findings of the qualitative research and D2.4 presenting the final outcomes of the research. In all States considered, and across all groups, interviews suggest the persistence of underlying barriers, such as the 'digital divide' and structural inequalities faced by vulnerable groups, which represent a substantial challenge to, and prevent the consumption of, digital cultural content. In terms of what may support overcoming barriers to access digital culture, constructive dialogue between organizations of vulnerable groups and public authorities as well as media companies, and advocacy were identified as useful tools to address those barriers. The role of the regulatory framework remains rather in the background. In general, there is a limited awareness of the role of copyright legislation in enhancing cultural participation. In that regard, D2.4 highlights that representatives of organizations of persons with disabilities and civil society organizations working on disability issues have a better awareness that copyright may entail a barrier to accessing cultural content than organizations representing other vulnerable groups. Some organizations of persons with disabilities exhibited awareness and appreciation for the 'Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled' (Marrakesh Treaty) as a facilitator of cultural participation. However, interviews made evident a rather patchy knowledge of the content of the Marrakesh Treaty itself, and a very limited knowledge of the overall role of the EU in implementing this Treaty.

Task 2.5 focused on two empirical case studies assessing the impact of regulatory responses to paradigmatic access issues: (i) academics and the research exception (T2.5.1), and (ii) people with visual impairments and the so-called Marrakesh VIP exception (T2.5.2). The research is supported by two surveys conducted across six EU Member States (Italy, Ireland, Sweden, Germany, Hungary, and The Netherlands). In particular, the two empirical case studies of Task 2.5 examined how standardized regulatory responses to copyright law influence the perception and behaviour of specific cohorts of individuals that experience paradigmatic issues and challenges in accessing digital cultural products. On the one hand, the specific needs of those cohorts boost the emergence of new products and technologies. On the other hand, these cohorts also require tailored regulatory interventions to accommodate their needs. This task delivered a final report (D2.8) that builds on an interim report (D2.5) released in M18. The final report highlights that, in terms of the preferred channels used to access digital cultural goods, both scholars and persons with visual

impairments (unsurprisingly) rely on tools or means that are cheaper, most convenient, easier to use or reach. For scholars Sci-Hub (or similar repositories) are handier than their library services, while persons with disabilities mostly use screen reading technologies, which are currently inbuilt in several devices. Further, the report showcases that the effects of disability based copyright exceptions, now provided for in the Marrakesh Treaty, implemented into EU law by means of a Directive and Regulation, are still unclear. In this respect, Sub-task T2.5.2. the Marrakesh Treaty benefits appear to be mostly linked to the possibility of having copies in Braille format. However, the cost of Braille printers or the limited Braille language education seems to constrain the benefits of the copyright exception. The survey confirms data gathered under Task 2.2 that dismantling barriers created by copyright law is only one of the necessary steps to grant accessibility of printed materials to people with disabilities.

The next pages will briefly present a summary of the findings and conclusions of the mapping, as illustrated in the report, and will link to them a set of policy recommendations directed to the EU and/or national legislators to tackle the most pressing gaps and pitfalls affecting EU copyright flexibilities, their proper functioning and their harmonization.

FINDINGS

The findings and conclusions on which these policy recommendations derive from (a) the mapping and analysis of EU legal sources, including legislative texts and CJEU case law; (b) the mapping and static analysis of national legal sources, and (c) their comparative analysis, clustered around 11 categories of copyright flexibilities; (d) the mapping and analysis of selected and representative examples of private ordering sources (e) data collected through interviews with representatives of vulnerable groups, i.e., persons with disabilities and members of minority groups, and a survey undertaken by members of such groups, along with desk-based research of vulnerability in respect of access to digital culture; (f) data collected through surveys conducted across six EU Member States (Italy, Ireland, Sweden, Germany, Hungary, and The Netherlands) on two case studies (academics and the research exception, and people with visual impairments and the so-called Marrakesh VIP exception).

EU LEGAL SOURCES

The mapping of EU legal sources of copyright flexibilities has drawn an all-encompassing picture of the state of the copyright balance in the EU, by (a) covering not only statutory interventions but also the CJEU's contribution to the harmonization in the field; (b) tracking all uses, purposes, policy goals and conflicting rights/interests privileged against rightholders' prerogatives; (c) creating a blended taxonomy that could help navigating EU legislative interventions, where provisions are classified under categories of uses, purposes/goals and rights/interests balanced against copyright, and horizontal, catch-all labels such as "public domain" and "external copyright flexibilities."

The mapping of **EU legislative sources** covered all secondary law sources that intervened in a substantial manner on the copyright balance. A substantiality criterion was introduced to limit the sample of acts analyzed to a reasonable range, and avoid listing provisions that just secondarily and cursorily touched upon copyright matters and the position of end-users. The study confirmed the presence of promising steps forward compared to the criticisms already highlighted by decades of legal scholarship on the matter, yet with persisting problems, such as:

- A **conceptual fragmentation and "clusterisation" of copyright flexibilities, with persisting gaps**. The closed-list approach to E/L, which requires the legislative introduction of a new provision every time a new balancing need emerges due to developments in technology, markets and socio-cultural needs, led to the construction of an articulated and complex array of intertwined provisions. This net of clustered rules inevitably presents overlaps, while at the same time leaving uncovered beneficiaries, uses and purposes that share similar balancing needs.

  Fragmentation remains even when attempts to harmonise have been undertaken under the influence of international regulatory regimes. This is the case of the disability exception. The Marrakesh Directive has certainly the merit to solidify, expand, and (partially) harmonize, the optional, loosely drafted and patchily implemented disability exception provided for in Article 5(3)(b) of the InfoSoc Directive. To some extent, it has succeeded in reconciling divergences amongst EU Member States, introducing a mandatory disability exception to rights of reproduction, communication to the public, making available to the public and distribution in relation to the three broadly defined categories of disability elicited under the Marrakesh Treaty. However, an exception to the right of communication to the public and reproduction (and potentially the right of distribution) for other categories of beneficiaries with disabilities still remains optional. The blurred contours of this remaining 'optional' expansive exception leave the door open to residual divergences across Member States, albeit for the purpose of enlarging the plethora of beneficiaries of the exception.

- The **contemporary presence of multiple regimes**, ranging from optional to mandatory E/Ls, or E/Ls that are mandatory only in specific fields (e.g. Article 17(7) CDSM), **hampering legal certainty**. This leads now to a system where some uses or purposes may take place cross-border in a setting characterized by legal certainty

and uniformity, while others risk to face extreme national fragmentations as to, e.g., beneficiaries and works covered, additional conditions and requirements imposed.

- The **outdated nature of several provisions**, which due to the rigidity of the EU system of copyright flexibilities requires the constant (and inevitably slow) intervention of the EU legislator to adjust existing provisions to new technological, market and social-cultural developments, or to introduce new provisions to the same end. Examples are the very long conception of the TDM, cultural preservation and digital teaching E/L, the outstanding questions on digital exhaustion, and the problems created by the definitions of reprography and private copy.

The mapping of the **relevant CJEU case law** helped complementing this overview and providing a comprehensive assessment of the current state of the art of EU copyright flexibilities and the benchmarks of their harmonization. The dataset and contextual/systemic analysis of the arguments and doctrines developed by the Court, classified through the same taxonomy used for EU legislative sources, offered a heterogeneous picture, which can be summarized as follows.

- Some sectors have been **heavily harmonized** and defined in a wide range of details (see, e.g. private copy, reprography and temporary reproduction) while others have been **completely left uncovered**, with a positive, ameliorating trend in the past years.

- Some optional exceptions have been **indirectly declared mandatory** and their **requirements clarified or standardized** against the silence of the corresponding EU provisions (parody and quotation).

- Some provisions have been **broadened in scope** and reach to safeguard their effectiveness and the underlying fundamental rights and public interest goals they aim at protecting (private study, e-lending).

- The notion and boundaries of **public domain** have been indirectly drawn by identifying basic principles to distinguish protected from non-protected works.

- In some instances, the Court has offered **game-changing interpretations** of certain provisions (e.g. the three-step test), or even triggered the countervailing reaction of the EU legislature to **overrule by law** the effects of some of its decisions (as in the *Reprobel* case).

- The area where the CJEU has most incisively impressed its touch to reshape the boundaries and operation of copyright flexibilities is the **fair balance doctrine** and the horizontal effects of fundamental rights on copyright E/Ls. Here, the Court admitted that fundamental rights are not only a complementary addition to the literal and contextual interpretation of existing sources. On the contrary, it stated that courts must provide, in any case, a fundamental-right compliant interpretation of exceptions – a circumstance that allows extensive readings and applications by analogy of existing E/Ls when this is necessary to protect fundamental rights and freedoms. In this context, the CJEU went as far as to state that the InfoSoc exceptions attribute rights to users, thus crystallizing the link between exceptions and CFREU provisions, and opening the gate for a more tailored, personalized consideration of the specificities of the case in the fair balance exercise. In addition, the Court returned to the functions of copyright as a benchmark to define the core content of each exclusive right in the strict proportionality assessment, making a significant step forward towards the direction of developing and reinforcing the fair balance doctrine, as recently testified by the very detailed proportionality analysis offered by *Poland v Commission* (C-401/19, ECLI:EU:C:2022:297).

NATIONAL LEGAL SOURCES

The **mapping of national legal sources** of copyright flexibilities **and their comparative analysis** provided a detailed overview of the state of the art of copyright flexibilities in all the 27 Member States, organized in 27 **national reports** which illustrated national provisions using the same taxonomy applied to EU sources. The reports commented on the

main features of Member States' rules and, in case of correspondence to an EU provision, they assessed convergences, divergences and degree of flexibility compared to the EU model. If and when relevant, sub-sections also mentioned and briefly described landmark judicial decisions that contributed to shaping the content of national flexibilities. This static analysis showed:

- a **full reception of EU Directives and Regulations**, with the only exception of the CDSM Directive, which to date has still to be transposed by almost half of the Member States;
- the **alignment of the majority of Member States around the flexibility categories provided by the InfoSoc Directive**, with just a handful of national legislatures standing out for creativity and originality in the provisions introduced along and/or beyond the model introduced at the EU level;
- the presence of **some variations in the conceptualization of some permitted uses** (e.g., among others, temporary reproduction, some lawful uses, private copy/reprography, private study, illustration for teaching and research), which are either classified/labelled differently across Member States, or are qualified as acts falling outside the scope of copyright, instead of as L&Es.
- along the same lines, the presence of a **wave of amendments of national copyright flexibilities after 2001**, which, however, **regarded only certain categories** (e.g., among others, disabilities, cultural uses, temporary reproductions, private copy, ephemeral recording, various types of lawful uses), **but not others** (e.g. parody, quotation);
- the **non-homogeneous reception of CJEU doctrines by national courts**.

COMPARATIVE REPORTS

Comparative reports followed the common taxonomy underlying this study and were limited to the categories for which the amount and relevance of data collected could allow sound, significant and verifiable assessments. This led to the exclusion of sectors which would have required, in light of their non-statutory basis, a reporting of sufficient judicial decisions by a substantial number of national experts (e.g. fundamental rights, public interest and users' rights), and of heterogeneous sectors such as consumer protection law, contract law, media law et al., due to the extremely fragmented nature of national experts' responses, which made it impossible to draw meaningful considerations.

Each report outlined convergences and divergences of Member States' solutions under each category and sub-category (provision) of flexibility, looking at beneficiaries, rights, uses/rights and works covered, conditions and requirements of applicability, and other relevant aspects to be taken into account. To the extent possible, comparative reports incorporated the state of implementation of the CDSM Directive by Member States and verified the compliance of national laws and judicial decisions with the indications provided by the CJEU as to the interpretation of specific E&Ls. The aim was to assess the degree of harmonization of national responses and to evaluate the comparative degree of flexibility of Member States' solutions, in order to provide a sound and objective basis for normative conclusions and policy recommendations.

The findings confirmed the scenario depicted by previous legal mappings with regard to the fragmentation of national solutions. Compared, however, to the very negative picture drawn in the past, the study highlighted also positive instances of convergences and increasing flexibility, while recent experiments of introduction of mandatory exceptions, such as those in the field of orphan works and uses for persons with disabilities, have proven largely successful in terms of harmonization and achievement of greater legal certainty across the Union. On the contrary, areas not covered by the EU harmonization still present moderate to very high degrees of fragmentation, strongly calling for an intervention by the EU legislature.

More in detail, the findings of each comparative report may be summarized as follows.

- **Temporary reproduction, lawful uses, de minimis uses.** Compared to other areas of EU copyright flexibilities, this category shows a high degree of harmonization and remarkable convergences, mostly due to the mandatory nature of great parts of the exceptions, limitations and other balancing tools that may be classified under this umbrella (e.g. temporary reproduction, software interoperability and backup copy exceptions). However, also sectors covered by non-mandatory provisions have witnessed a general convergence of national solutions (e.g. ephemeral recording, freedom of panorama). Still, the devil often lays in the details, and what keeps on fragmenting national responses in this area are the oft-substantial differences Member States feature in the definition of the specificities of generic EU exceptions, or the introduction of additional conditions of applicability.

- **Private copy and reprography.** The state and degree of harmonization of the private copy exception across the EU is not homogeneous. While most of the EU countries already featured such a flexibility or have implemented Article 5(2)(b) InfoSoc, along or together with Article 5(2)(a) on reprography, their approaches are various, apart from a few basic points of convergence. On the side of beneficiaries, some Member States extend the exception to cover third party copying and, more rarely, legal persons. As to the objective scope of the provision, the lack of harmonization goes hand in hand with a general rigidity on the amount of works that can be copied, which is variously limited by quantitative or qualitative caps, or on the types of works covered, with different national carve-outs. These rigidities are widespread and differently framed, in a way that common trends are difficult to trace. Permitted uses are usually limited to reproduction, with a few countries opening to digital copies, while remuneration schemes converge to private levy models sharing common features, also thanks to the repeated interventions of the CJEU. National courts also contribute to create fragmentation with different interpretations of additional criteria and conditions of applicability, such as the three-step test, the impact of TPMs on the exercise of the exception and the remuneration due, and the notion of non-commercial use.

- **Parody.** As the comparative analysis demonstrates, national implementations of the parody exception are far from being harmonized. On the contrary, they show remarkable divergences, to the point that the exception has not been implemented in several Member States, its space being functionally occupied by an extensive use of the quotation exception, or by resorting to free uses. This already quite fragmented scenario is made worse by the fact that the concept of parody itself, and humour, is difficult to grasp and, even if some clarifications came from the CJEU, national courts keep working and reworking its substance and boundaries. This happens also with regard to the "structural" parameter of parody. In addition, Member States have introduced other conditions of applicability, some of them ruled out by the CJEU but still emerging in national case law, such as the prohibition of reputational damage against the author of the original work, the necessary non-commercial nature of the parody, and the necessity-based limitation used to define the maximum amount that can be taken from the original work. Last, *Deckmyn* has also admitted that the parody exception can and should be disapplied when its exercise results in discriminatory messages and activities, thus introducing yet another element of uncertainty into an already problematic framework. This patchwork is unlikely to be harmonised by Article 17(7) CDSM. Even if the provision brought some beneficial effects, most Member States have implemented it *verbatim*, without any coordination with their parody exception, aside from a few countries that have taken this opportunity to extend it to pastiche and caricature when missing. Member States without a general parody exception have not taken this opportunity to fill in the gap, thus now their copyright acts feature explicitly parody only for users of OCSSP services. This has further increased the degree of fragmentation of regimes and national solutions, while the harmonizing impact of *Deckmyn* is still yet to be seen.

- **Quotation.** Despite quotation represents the only mandatory exception under the Berne Convention, and part of Member States' tradition much before the EU harmonization, national provisions are still far from being standardized. Differently than parody, all EU countries feature a quotation exception, which share basic elements such as the undefined category of beneficiaries, the need to mention the author's name and the source of the work quoted and, to a certain extent, the purposes(s) of quotation. However, such a uniformity

fades away when it comes to the objective scope of the quotation (which types of works can be copied and to what extent). At the same time, many countries have added further requirements, not enshrined in the InfoSoc Directive, the most common being the compliance with fair practice and the non-commercial use of the quotation. And while some CJEU decisions have provided additional guidance and requirements (e.g., the need to enter into a dialogue with the quoted work, the possibility to quote entire works, or not to embed the quotation into the citing work but to quote via hyperlinks), national case laws are still far from being fully aligned with the CJEU's doctrines. As for parody, also in the field of quotation Article 17(7) CDSM is having a limited impact, being usually implemented *verbatim* and thus adding only the mention to online quotation in favour of users of OCSSPs' services.

- **Informatory purposes.** Flexibilities related to "informatory purpose" present a simplified structure at the EU level but a much greater complexity in national implementations. All Member States, in fact, recognize in one way or another the prevalence of the public interest in receiving information on current events over copyright, but they are far from converging on the practical implementations of such exceptions. Differences range from less significant elements to much more radical ones. First, the three informatory purposes exceptions included in the InfoSoc Directive are not always transposed in their entirety by all EU countries. Second, the pool of beneficiaries and stakeholders they apply to varies a lot across the Union, ranging from countries that open such flexibilities to anyone to countries that are less prone to follow this path. Whether the possibility to use protected work to inform the public is a prerogative of "mass media" only, or can be extended also to other stakeholders, is likely to have a significant impact on the new online information industry, especially given the role that information plays in a free and democratic society. Third, their overlap with quotation and other exceptions protecting freedom of expression has been often highlighted – a circumstance that may increase the degree of flexibility available to uses but has also created confusion and uncertainties in their judicial application. Last, the advent of new technologies and new business models has heavily challenged the operation of provisions the boundaries of which are defined on the basis of traditional concepts, anchored in the analogical world and looking at traditional media publishers. This has evidenced their general rigidity, and at the same time their different operation in the judicial practices of single Member States.

- **Teaching and research uses.** Copyright flexibilities for uses in research and teaching are among the most fragmented and less harmonized E&Ls in the EU. This is not only due, as usual, to the optional nature of great part of the EU provisions regulating the field, but also to the fact that all EU Directives but for the CDSM always covered the two purposes – teaching and research – under the same general, vaguely worded exception. This paved the way towards the enactment of a wide variety of national solutions, covering either both categories or just one (usually teaching), and addressing the definition of beneficiaries and permitted uses in a similarly various fashion. Fragmentation of national solutions can be noted at all levels. Member States present a highly diversified approach towards the definition of the subjective scope of their teaching and research L/Es, by choosing either not to identify beneficiaries, or to provide open or closed list of educational (and more rarely research/scientific) entities. Vague or too general definitions often lead to restrictive judicial interventions, which bring rigidity without adding legal certainty. Lack of harmonization is even more evident in the case of the objective scope, both with regard to the array of permitted uses and the works covered. In some situations, national exceptions for teaching and research encompass a general right of use, opening the door to broad interpretations. Much more frequently, Member States define a circumscribed number of permitted uses. However, options are too various to sketch common trends. The same can be said for the limits to the types or quantity of works that can be used, where Member States present a wide array of very specific (and different) provisions, or to additional conditions of applicability such as limitations in purpose, necessity benchmarks, three-step test and remuneration. Limitations as to the purpose are also prone to be strictly interpreted by courts, which tend to read narrowly the notion of educational activities and goals. On top of this, research purposes are almost completely neglected, for the great majority of national provisions are directly and solely addressed to teaching or general educational activities. As expected, the implementation of Article 5 CDSM on digital teaching, which is a mandatory provision not overridable by contract, is leading to a greater convergence. However, every time a detail is left to the discretion of Member States (e.g., whether to impose

a duty to remunerate, or whether to subordinate the operation of the exception to the absence of adequate licenses), differences emerge again. Aware of this, the EU legislator introduced the country-of-origin principle, which aims at solving the problem of the territoriality of exceptions and of legal certainty in cross-border uses by applying the law of the country of establishment of the beneficiary of the provision all across the Union. The first research-oriented-only flexibility introduced in EU copyright law – Article 3 CDSM on text and data mining for research purposes – has also been implemented almost verbatim by Member States so far, with only a few divergences on permitted uses and on the list of beneficiaries, usually in favour of broader approaches. This represents a novelty in the interplay between EU and national legal systems and, despite all the criticisms raised by the TDM exceptions and their flaws, it shows a path that may be successfully followed in the future.

- **Cultural and socially oriented uses.** In the pre-CDSM era, the EU copyright acquis was characterized by a piecemeal approach to copyright flexibilities directed to target cultural uses and the preservation of cultural heritage. Despite targeting the same category of beneficiaries, both EU and national provisions were fragmented as to works covered and permitted uses. The optional nature and very general wording of InfoSoc and Rental exceptions did not contribute to create a level playing field nor to push Member States to converge on similar paths. In fact, the pre-CDSM exceptions for CHI preservation and the array of copyright flexibilities for public lending are paramount in illustrating the vacuum of harmonization in the area. Three different approaches are equally distributed across the EU with regard to beneficiaries (unidentified, closed or open lists of selected beneficiaries, single beneficiaries), works covered and permitted uses (general right of use, only a selected list of rights, one single use, as well as unspecified, a selected list of works or single categories thereof). Conditions of applicability - remuneration duties and limitations in purpose - are read in a highly diversified manner by national legislators and courts, exacerbating the patchwork of national solutions. The same fragmentation characterises other cultural, educational and socially oriented uses covered by national flexibilities, where there is little or no convergence in focus, and no possibility to conduct a real comparative assessment for the extreme heterogeneity of solutions deployed. In addition, only a few countries implemented Article 5(2)(e) InfoSoc. The mandatory nature of the OWD exception pushed national laws towards a much greater standardization, with a handful or no countries departing from the EU model. It is yet to be seen whether this will be also the effect of Articles 6 and 8 CDSM, covering general reproductions of CHI collections for preservation purposes, and ECL/exceptions for the preservation and making available to the public of out-of-commerce works, again by CHIs. Notwithstanding the welcome shift in the approach from optional to mandatory exceptions, this area is still characterized by the highest degree of fragmentation among all EU copyright flexibilities. Not only EU provisions envision different regimes for different works, and limit cultural and preservation uses to mere reproductions but, as well-highlighted in the comparative analysis, national solutions showcase a plethora of distinctions, specifications and variety of approaches to permitted uses, linked or not to specific categories of works, and only a baseline uniformity of beneficiaries covered. This means that, apart from orphan and out-of-commerce works, and to a certain extent the reproduction of CHI collections for preservation purposes under Article 6 CDSM (here, however, already with some distinctions between Member States), there is very little harmonization across the EU, and a great variety of degrees of flexibility/rigidity in national solutions. This is detrimental to legal certainty, hinders the possibility to develop cross-border cooperation and exchanges, and it may ultimately create obstacles to the development of consistent EU cultural policies when protected works are involved.

- **Copyright and disability.** National implementations of the InfoSoc and Marrakesh disability exceptions present a high degree of harmonization and tend to align to the EU text, particularly after the further push towards a more pervasive standardization impressed by the Marrakesh Directive. However, divergences can still be found across the EU. As to beneficiaries, some countries present more rigid approaches to the identification of authorized entities, with case-by-case appointments, strict criteria and measures to comply with and related high costs to bear. On top of the EU baseline, a number of countries provide broader definitions of disability, which enlarge the roster of end beneficiaries, while a handful of national laws adopt more restrictive readings, and the same can be said vis-à-vis the possibility for third parties to exercise the exception on behalf of disabled individuals. As to the objective scope, very few divergences can be found within the EU landscape. With regard

to the various types of works covered by national exceptions, a restricted group of countries provides open lists following the EU model; few of them encompass also databases and software; others go as far as to provide different rules for different works. Permitted uses are generally regulated in a harmonized manner, except for some countries mentioning general right to use, or adding on top of the EU list also other rights such as public performance. Remuneration duties is the only area where the level of harmonization is low. In general, the majority of Member States chose not to provide remuneration. In very limited cases, remuneration is required, and in some countries only in limited circumstances. As to criteria of applicability, national exceptions are consistently harmonized. Yet, it should be noted that the three-step-test is not mentioned in all EU countries, and that some national legislators provide additional rules to regulate rights and duties of authorized entities.

- **Uses by public authorities.** While flexibilities for uses by public authorities are very much nation-based, the introduction of Article 5(3)(e) InfoSoc has triggered some basic harmonization. When Member States decided to transpose the provision, they generally followed the EU model, but for some circumscribed matters. For instance, some national implementations omit one or more of the purposes of the exception (e.g. public security, or judicial or administrative proceedings). In a few cases, Member States introduced subject-specific restrictions, carved out from the scope of the exception particular categories of works, or restricted/expanded the range of permitted uses, usually with regard to specific beneficiaries. Only limitations as to the purpose have been consistently introduced as additional conditions of applicability. On the contrary, only a few countries have implemented Article 5(3)(g) InfoSoc, in a much more fragmented fashion, and with a wide array of restrictions as to events and works covered.

- **Public domain.** Beyond the wide array of objects often excluded from copyright protection, public domain and paying public domain regimes remain highly fragmented, uncovered and not harmonized in the EU. While it is true that there is a generic convergence on the identification of two broad categories of subject matters excluded from protection, and that the idea-expression dichotomy emerges between the lines of several national legislations, it is similarly true that the specifications of such categories feature quite different details across Member States laws and judicial decisions, with the result that – no matter the good intentions of the CJEU – the boundaries of public domain are far from being harmonized in the EU. In this sense, the attempt made with Article 14 CDSM should be welcome, but it is still far not enough to reach the uniformity that is needed to ensure legal certainty and the correct functioning of the EU copyright law architecture.

PRIVATE ORDERING SOURCES

The **mapping of private ordering sources** was carried out in two phases. Phase one was dedicated to the analysis of the EULAs and terms of use/service etc. status quo of selected online platforms – grouped into four distinct categories and analyzed in light of eight variables – preceding the implementation deadline of the CDSM Directive. Phase two was carried out in January 2022 to address whether and how selected OCSSPs (that is, only platforms that fit into the frames of the CDMS Directive's new regime under Article 17) complied with the relevant provisions of the CDSM Directive [namely, Article 17(4), (7) and (9)] after its implementation deadline.

The study on the status quo of the EULAs evidenced that, first, users are granted a more limited range of flexibilities with respect to the use of intangible or service-like contents. These flexibilities are narrowed down by the legislation itself (e.g. by the exclusion of the applicability of the doctrine of exhaustion, offering for the resale of lawfully acquired copies, from the digital domain), but, more importantly, the examination of selected EULAs evidenced that platforms also tighten the grip on the potential uses of their services. For example, limitations or bans are placed on access to contents on a geographical basis ("geo-blocking") or secondary dissemination. Technical protection measures are strictly applied in many cases. EULAs are either silent on some significant end-user flexibilities (e.g. freedom of expression-based exceptions and limitations, which might be covered by fair use in the US) and they are not clear enough on the practical application of those flexibilities [e.g. well-developed notice-and-take-down regime, but loose(r) complaint-and-redress mechanisms]. Similarly, various service providers apply misleading language, e.g. they speak of

'sale', 'purchase' and the like, although the EULAs are purposefully limited to offer a license to the clients of the service providers. In sum, the majority of private regulatory provisions are asymmetrically in favor of the platforms.

Second, the study also spotted certain effects that stem from the structure and business logic of the services, as well as the public laws of the European Union. E.g. users of social media platforms (e.g. Facebook) as well as streaming platforms with hosting functionality (e.g. YouTube) exercise greater control – both at the upload and the access level – over the available contents than users of streaming platforms without hosting functionality (*UGC effect)*. Furthermore, service providers are limited by the existing copyright rules, but platforms that offer UGC provide an environment of greater flexibility (*regulatory lock-in effect)*. Finally, end-user experience is heavily affected by the fierce competition of various platforms. The horizontal (service-based, e.g. Facebook v Twitter) and vertical (company- or portfolio-based, e.g. Apple v Facebook) competition of service providers necessitate learning from each other, and sometimes overbidding competitors' offers. Quite a lot of end-user flexibilities stem from this competition, e.g. secondary dissemination, family sharing or UGC-sharing and further user benefits, e.g. subtitles (*business flexibility effect).*

The second phase empirical research of the EULAs of selected OCSSPs indicate a clear non-compliance with Article 17 in two main directions: first, by the exclusion of primary liability of platform operators and, second, by the lack of a balanced notice and takedown procedure that does not only protect the legitimate interest of the right holders but also – via a complaint and redress mechanism – end-users' rights as well.

The majority of the EULAs examined include guarantees to allow users to challenge the lawfulness of content removal, but neither the guarantees in Article 17 CDSMD appear *expressis verbis*, nor is there any specific reference to general prior content filtering mechanism in the contractual terms. This is certainly instructive for two reasons. On the one hand, it seems that OCSSPs are sticking to well-established liability limitation clauses, shifting the liability to the end-user, thus weakening the viability of the new liability regime envisaged by the CDSM Directive. On the other hand, some platforms, such as YouTube, also actively filter uploaded content through their automated systems. They can remove contents at their own discretion without notifying the right holders. But the balance between the actors concerned by the operation of the platforms – service operators, right holders and end-users – continues to tip in the direction of the first two stakeholders. At the same time, it is unclear how the platforms protect freedom of expression, freedom of creative creation and freedom of access to information, which have been among the main watchwords for criticism of the provisions of Article 17 CDSMD.

Although the transposition of the CDSM Directive was still underway in some Member States at the time of the completion of our studies (and, by the way, is still underway in multiple countries), the status quo seems to remain unchanged. Maintaining this status quo is clearly helped by the sporadic transposition of the CDSM Directive and by the fact that platforms with a North American background operate their contractual practices under the US copyright regime rather than EU copyright law.

RECOMMENDATIONS FOR FUTURE POLICY ACTIONS

The findings of the research conducted by reCreating Europe on copyright flexibilities and barriers to access to culture experienced by vulnerable groups highlight the need for specific policy interventions. These can be grouped under three areas of policy recommendations, i.e. (a) (a) general/systematic recommendations; (b) recommendations on specific flexibilities; (c) recommendations on the coordination between EU copyright law and cultural and social policies with regard to vulnerabilities; and (d) recommendations related to platforms' private ordering mechanisms (EULAs).

IN GENERAL

RECONSIDER THE APPROACH TO HARMONIZATION FOR ALL COPYRIGHT FLEXIBILITIES

The most recent legislative interventions (OWD, Marrakesh and CDSM) opted for mandatory provisions being very detailed in the definition of their requirements, and/or adopting the country of origin principle to overcome territoriality problems (e.g. Article 5 CDSMD). This shift in the approach has already proven successful in reaching a greater harmonization across Member States, thus effectively tackling most of the problems highlighted by stakeholders and scholars as a consequence of the fragmentation and territoriality of L&Es. However, the change has been only forward-looking. Existing exceptions remain optional and vague in the language, as opposed to highly harmonized exclusive rights, and despite the CJEU has repeatedly hinted to the fact that L/Es protecting fundamental rights shall be indirectly understood as having a mandatory nature. Against this background, it is highly advisable to **(a) reconsider the optional nature of existing L/Es** and provide for **mandatory and detailed provisions** every time a greater harmonization would not harm national cultural diversities or (b) should a greater harmonization prove impossible, **extend the country of origin principle to all existing flexibilities**.

SIMPLIFY THE E&LS REGIMES AND ENSURE CONSISTENCY IN THE RATIONALES UNDERLYING THEIR ADOPTION

Another consequence of the shift in the approach on the nature of L/Es is the current presence of several different regimes for different flexibilities. Some provisions are mandatory; others are optional; Article 17(7) CDSM declares mandatory some optional InfoSoc exceptions only for online uses on OCSSPs. Aside from cursory references (e.g. Recital 70 CDSMD), it is not possible to identify common rationales that explain why the EU legislator has opted for this or that regime, to the detriment of legal certainty and predictability. It is highly recommended to pursue a simplification of L/Es regimes along the lines described above, and the explicit use of similar legislative techniques for provisions sharing similar goals (e.g. mandatory nature for provisions balancing copyright against conflicting fundamental rights, and/or impacting on the DSM of protected works).

INTRODUCE PURPOSE-ORIENTED PROVISIONS TO OVERCOME RIGIDITIES

National and EU case laws show that provisions that are function-oriented are more adaptive to the evolution of technologies, markets, business models and users' needs, allowing courts to strike an effective balance between the opposite needs for flexibility and legal certainty. A telling example is the creative use of the quotation exception by national judges to overcome the rigidity of national copyright systems and fill in legislative gaps. In this sense, a valid alternative to an overarching fair use clause to tackle the rigidity of L/Es in EU copyright law may be found in the introduction of mandatory purpose-oriented provisions, acting as

residual/closing rules in all jurisdictions. This would constitute the legislative implementation of the fair balance doctrine developed by in the last decade by the CJEU, and ensure the coherent and consistent adoption of its principles in all Member States – a result that, as evidenced by the data collected in this study, is unlikely to be achieved without a legislative intervention, once again to the detriment of legal certainty, of the EU harmonization process and of the effectiveness of the copyright balance.

CHANNEL INTO LEGISLATIVE PROVISIONS KEY DOCTRINES DEVELOPED BY THE CJEU TO INCREASE LEGAL CERTAINTY

This study has evidenced the weak reception, by several national courts, of landmark CJEU doctrines that have reached a substantial degree of development and clarity, and could greatly contribute to the harmonization of EU copyright and the balanced fulfillment of its goals. The reference goes mainly to the fair balance doctrine, to the principle of effectiveness of L/Es, to the *Deckmyn* doctrine on the implied mandatory nature of L/Es linked to fundamental rights. The implementation of such principles into the EU legislation would help correcting this flaw and ensure the smooth and uniform reception of such doctrines into national copyright laws.

CONSIDER INTRODUCING HORIZONTAL PROVISIONS THAT ALLOW A JOINT UPDATE OF TRADITIONAL E&LS TO NEW TECHNOLOGICAL, MARKET AND SOCIO-CULTURAL DEVELOPMENTS

Due to the use of a language that is not fully tech-neutral and definitions that are often too rigid, several copyright flexibilities have become outdated vis-à-vis the many technological, market and socio-cultural developments happened in the past decade. To ensure the effectiveness of existing provisions and avoid facing the same problems in the years to come, it may be worth considering the introduction of horizontal provisions that offer new technologically neutral definitions of key terms and concepts (e.g. copy, original, work, good / product etc.), and redefine the boundaries between exclusive rights – with particular regard to the right of communication to the public and the right of distribution - having regard to the potential functional equivalence between digital and tangible markets and supports. This would also contribute to align EU copyright law to the approach adopted by the EU in the field of consumer protection.

SPECIFY THE NOTION OF PROTECTED WORK AND HARMONIZE EXCLUSIONS

The boundaries of public domain represent one of the least harmonized matter in EU copyright law. No EU provision define the general notion of protected work, nor does it delineate it *e contrario* by means of common exclusionary rules. The CJEU offered some guidance with *Infopaq, Levola* and *Cofemel*, but these are only fragmented hints, as opposed to a plethora of diverging rules and principles featuring national copyright laws and judicial decisions. While in the preparatory phase of the InfoSoc Directive such an imperfect harmonization was not perceived as a pressing issue to be tackled, the advent of AI and the surge of the data economy have radically changed the framework. Solutions such as the proposed Article 35 of the Data Act are useful but only partial patches. With the boundaries of copyright becoming increasingly more blurred, the time has come for a more substantial and incisive harmonization of its subject-matter, starting from clear-cut standardized exclusionary rules.

EVALUATE THE OPPORTUNITY TO INTRODUCE FLEXIBILITIES FOR TRANSFORMATIVE USES

An area where Member States show substantial divergences is the treatment of conducts and uses that, although formally falling under an exclusive right or outside the strict borders of an E/L, do not conflict nor compete with the normal exploitation of a protected work. Such instances, which are akin to cases that in the US would fall under the category of “transformative uses”, are shielded from copyright protection by some

national courts and banned by others, with dissonances also within the same Member State. Against this background, EU copyright law would benefit from a legislative clarification on the matter. Since the transformative uses doctrine does not conflict with any general principle characterizing the copyright acquis Communautaire, an objective impact assessment on its economic and non-economic effects could usefully ground and direct future EU policy actions.

ON SPECIFIC FLEXIBILITIES

MOVE TOWARDS A GREATER HARMONIZATION OF THE PRIVATE COPY AND REPROGRAPHY EXCEPTIONS FOR SEAMLESS CROSS-BORDER ACTIVITIES AND MANAGEMENT BY CMOS

It is not by chance that the area of L/Es mostly touched by the CJEU case law is that of private copy and reprography. As testified by *reCreating*'s national and comparative reports, most of the EU countries feature the provisions, but with few basic points of convergences. The lack of harmonization on key matters such as beneficiaries, types of works covered/excluded, quantitative or qualitative caps and other limitations, application of the provision on new technologies (e.g. cloud services) is substantial. Only remuneration schemes converge to private levy models sharing common features, also thanks to the CJEU's repeated interventions. Still, methods of calculations and basic principles are not fully streamlined. Such a fragmentation constitutes an obstacle to the equal treatment of rightholders across the Union, to legal certainty for all parties involved, and to the development of a common competitive market for CMOs engaging in cross-border activities. The matter was tabled during the Public Consultation on the Modernization of EU copyright rules but later abandoned. More empirical data shall be collected to measure the impact of this weak harmonization on rightholders and on the implementation of the EU plan of boosting EU-wide CMOs and markets for licenses. This will ground a sounder distinction between aspects that require a more intense harmonization, and aspects which are to be remitted to national discretion.

BUILD ON DECKMYN AND ARTICLE 17(7) CDSM TO MOVE TOWARDS A GREATER HARMONIZATION OF THE PARODY EXCEPTION

Despite its importance for the protection of freedom of expression, as reiterated by the CJEU in *Deckmyn* and by the CDSM Directive, several Member States do not provide for a parody exception, having their courts fill the gap by stretching provisions such as quotation or free uses. Those that feature it present diverging approaches as to key definitions, further conditions of applicability et al, some of them ruled out by the CJEU but still emerging in national decisions. Since neither the *Deckmyn* ruling nor the opportunity offered by Article 17(7) CDSMD triggered any substantive change, it is highly recommended that also the general InfoSoc L/E on parody, caricature and pastiche is transformed into a mandatory provision and complemented with additional binding details on purpose and limitations, with the exclusion of additional conditions. This will ensure consistency, greater harmonization and legal certainty in cross-border uses, and thus a more uniform and less discriminatory treatment of freedom of expression against copyright across the EU.

TRANSFORM THE QUOTATION EXCEPTION IN A RULE OF MAXIMUM HARMONIZATION

Although quotation is present as an exception in all Member States, mostly due to its mandatory nature in the Berne Convention, and despite Article 5(3)(d) InfoSoc is relatively detailed, national laws show great divergences in the regulation of the key features of the provision (works covered, exclusions and other limitations, further conditions of applicability etc.). On the basis of the same considerations advanced above for the parody exception, and particularly in light of the importance of the provision for freedom of expression

in the borderless digital world, it is strongly recommended to introduce further specifications to Article 5(3)(d) InfoSoc, in the form of a maximum harmonization, reordering the indications provided by the CJEU.

ADAPT THE FLEXIBILITIES FOR INFORMATORY PURPOSES TO THE NEW ONLINE INFORMATION INDUSTRY

Flexibilities related to informatory purposes are present in all Member States, but with great divergences. Differences range from less significant elements to much more radical ones. First, the three informatory purposes exceptions included in the InfoSoc Directive are not always transposed in all EU countries. Second, beneficiaries highly vary, ranging from very strict to more flexible approach. Third, their judicial application is scarce and often negatively impacted by their overlap with other exceptions such as quotation. Last, most national provisions use non-tech neutral terminologies, thus making such flexibilities outdated vis-à-vis new technologies and new business models. The introduction of a new press publishers' rights represented a missed opportunity to intervene on the matter. In light of the impact of such provisions on the new online information industry, it is recommended to aim at a more pervasive harmonization in the field, with the introduction of updated mandatory provisions that are capable of including effectively new digital actors and online uses through the use of a technologically neutral and purpose-oriented language. As a second best, it shall be considered the possibility to overcome the negative impact of territoriality by means of the application of a country of origin principle on existing informatory purpose exceptions.

INTRODUCE A GENERAL MANDATORY RESEARCH EXCEPTION

The comparative mapping conducted by *reCreating Europe* shows that the great majority of Member States have implemented Article 5(3)(a) InfoSoc and, to a lesser extent, Article 5(3) Software and Articles 6(2)(b) and 9(b) Database. However, the fact that all EU Directives but for the CDSMD always covered the two purposes – teaching and research – under the same general, vaguely worded exception paved the way towards the enactment of a wide variety of solutions, covering either both categories or just one of the two. Beneficiaries, permitted uses, conditions of applicability are addressed in a similarly various fashion, often without distinction between teaching and research activities when the national provision covers the two purposes jointly. Along with the lack of harmonization, research purposes are almost completely neglected, for most national provisions are directly and solely addressed to teaching or general educational activities. This cannot but have a substantial impact on cross-border cooperative research endeavours, to the detriment of the competitiveness of the EU R&I ecosystem and open science goals.

While Article 3 CDSM represents an important and welcome step forward, such flaws can be mended only with the introduction of a general mandatory research exception, following the model inaugurated by Article 5 CDSM in the field of digital teaching. This would not only help achieving a greater harmonization, but would also allow clarifying and standardizing key aspects of the new L/E, i.e. beneficiaries, works and uses covered, safeguards, other conditions of applicability, which shall be delineated in coordination with EU Open Science Policies. Should a new general and purpose-oriented article prove unfeasible, the second best option is the one proposed by the "Study on EU copyright and related rights and access to and reuse of data" (EC 2022a, p.4) which uses Article 5(3)(a) as a reference point.

ALIGN EU COPYRIGHT LAW WITH THE EU POLICIES ON OPEN ACCESS AND OPEN SCIENCE

The EU has recently boosted its commitment to open access and open science with several, multi-level interventions. The fulfilment of these policy goals require also the removal of obstacles and the creation of adequate leverages in key regulatory sectors such as data laws and copyright law. The findings of reCreating Europe's mappings on copyright flexibilities fully support the conclusions and recommendations advanced by two studies commissioned and recently published by DG RTD/Open Science on the impact of EU copyright law

on (a) access and reuse of scientific publications and (b) access to scientific data (EC 2022a; EC 2022b). More specifically, and together with the introduction of a mandatory research exception as detailed above, it is strongly advisable to introduce in EU copyright law provisions which may effectively complement non-legislative measures already adopted by employers, funders and other organisations to achieve full open access to scientific publications and data from the side of content providers (authors). These may come in the form of

1) an intervention on copyright contract law, imposing mandatory clauses for scientific publishing agreements along the lines of non-legislative EU OA-OS policies;
2) mandatory reversion rights;
3) a new EU-wide Secondary Publication Right limited to OA via self-archiving, not overridable by contract and attributed either to authors or directly to their employers. This would also allow harmonizing the largely divergent approach of (the few) Member States that have regulated the matter.

A strong, maximum harmonization of such rules may avoid the need to intervene on national rules regarding authorship and first ownership of scientific publications.

CONDUCT AN IMPACT ASSESSMENT AFTER THE FULL CDSM TRANSPOSITION TO VERIFY THE NEED TO STREAMLINE TRADITIONAL AND DIGITAL TEACHING EXCEPTIONS

The mapping and analysis of national implementations of Article 5 CDSMD to date showed that Member States still present different approaches to flexibilities for teaching purposes. While the CDSM Directive has overcome the problem of territoriality in the field of digital teaching with the introduction of the country of origin principle, just a handful of Member States have taken care of coordinating their traditional teaching E/L with the new digital teaching provision, while the majority of national legislators have merely juxtaposed the two rules. As a consequence, digital and non-digital teaching uses are still treated differently across the EU. It is highly advisable to schedule an impact assessment of such divergences after the full transposition of the CDSM Directive, in order to verify whether and to which extent an intervention to streamline national teaching exceptions is effectively needed.

CLARIFY THE TREATMENT OF LENDING OF ELECTRONIC BOOKS AND OTHER PROTECTED WORKS IN DIGITAL FORMAT AFTER THE CJEU DECISION IN VOB

The conflicting CJEU's decision in *VOB* and *Tom Kabinet* have created an inner contradiction in the system of copyright flexibilities. While in *VOB* the need to ensure the effectiveness of exceptions prevailed over the principle of uniform interpretation of similar terms across EU law, and made the Court stretch the notion of "copy" under the public lending exception (Article 6 Rental) to cover also e-books, in *Tom Kabinet* the principle of exhaustion under Article 4(2) InfoSoc was limited to material copies with a strictly literal interpretation. In order to avoid future conflicting decisions and achieve legal certainty, it would be advisable for the EU legislator to take a stand on *VOB*'s introduction of the principle of functional equivalence of material and digital copies within the context of L/Es for cultural uses, moving beyond the limited scope of Article 6 CDSM. This would complement the more general intervention suggested above on the use of non-technologically neutral terms in provisions on copyright flexibilities, which make most of them unfit to operate effectively in the DSM.

MOVE TOWARDS A GREATER HARMONIZATION OF FLEXIBILITIES FOR CULTURAL USES IN ORDER TO FOSTER CROSS-BORDER COOPERATION AND BOOST A WIDER DEVELOPMENT OF COMMON CULTURAL POLICIES

See Policy Recommendations "The Future of Digital Cultural Heritage" (WP5).

BROADEN THE SCOPE OF FLEXIBILITIES FOR CULTURAL USES TO MOVE BEYOND MERE PRESERVATION PURPOSES, INTRODUCING MANDATORY EXCEPTIONS FOR, E.G., ACCESS AND RE-USE

See Policy Recommendations "The Future of Digital Cultural Heritage" (WP5).

EMBRACE A WIDER NOTION OF DISABILITY IN COPYRIGHT LAW AND HARMONIZE RELATED EXCEPTIONS ACROSS THE EU, BEYOND THE LIMITS OF THE MARRAKESH DIRECTIVE

The somewhat hazy 'disability exception' in EU law which results from the application of the InfoSoc Directive and the Marrakesh Directive should be further harmonized and expanded *ratione personae* and *ratione materiae*. With regard to the scope *ratione personae*, the disability exception should embrace beneficiaries that fall within the definition of persons with disabilities proffered by the CRPD. With regard to the scope *ratione materiae*, the study released by the Commission, in April 2022, on the basis of Article 9 of the Marrakesh Directive on the availability of works and disabilities not covered by the 'Marrakesh Directive' did not give a univocal indication as to whether an expansion of the disability exception provided for in the Marrakesh Directive to works other than printed works. However, this project and the empirical research conducted under Task 2.2 reveal that an enlargement of the material scope of the exception will *de iure* and *de facto* favour greater access to digital content for persons with disabilities, and will support the realization of accessibility provisions included in the European Accessibility Act (EAA). Most significantly it will reduce the scope for divergences across the Member States, if it will result in a broad but univocal mandatory EU disability exception.

LEVERAGE ON THE COMBINED EFFECT OF THE DISABILITY COPYRIGHT EXCEPTION AND EU ACCESSIBILITY LEGISLATION

Copyright legislation and accessibility legislation should be seen as complementary, and their combined effect should be leveraged to enhance accessibility and fully implement the CRPD. Once, fully commenced and implemented, the EAA will ensure the production and distribution of 'born accessible publications' and, from June 2025, consumers will be able to acquire and read e-books irrespective of their disability. In that regard, for e-books, Annex I of the EAA establishes a number of accessibility criteria, and requires inter alia that 'when an e-book contains audio in addition to text, it then provides synchronised text and audio' and that e-book allows the operation of assistive technology. However, accessibility requirements do not apply where they would impose a disproportionate burden on the economic operators concerned. Further accessibility requirements do not apply when they would imply a significant change in a product or service that results in the fundamental alteration of its basic nature. Since turning an e-book into a paper Braille book might be seen as a fundamental alteration, the copyright disability exception remains vital to ensure making available and distribute Braille copies.

ADDRESSING VULNERABILITY BY BETTER COORDINATING EU COPYRIGHT LAW WITH BROADER EU CULTURAL AND SOCIAL POLICIES

Data from interviews with representatives of vulnerable groups as well as from a survey answered by vulnerable people themselves, undertaken under Task 2.2, illustrate that EU copyright law should be applied in a way to better address the needs of vulnerable groups such as minorities (both old and new (migrant) minorities) and should be embedded within broader cultural policies enhancing open access and audience development. Further, since, for vulnerable groups, barriers created by copyright add to structural barriers, such as the digital divide, it is essential the copyright law does not operate in a silo, but is embedded in broader social policies.

ADDRESS UNDERLYING STRUCTURAL BARRIERS THAT AFFECT ACCESS TO DIGITAL CULTURE AND ULTIMATELY RENDER COPYRIGHT FLEXIBILITIES LESS EFFECTIVE

The analysis of the interviews shows that there are persistent structural barriers that undermine the cultural participation of vulnerable groups. In this respect, this report confirms the results of other past and well-established research. The barriers to access and participation identified by interview participants related to their lower socio-economic status of vulnerable groups, their economic, social and political disempowerment, the paternalistic attitudes they face from creators and providers of digital cultural goods and services, and the well-studied 'digital divide'. It is hence necessary that copyright flexibilities become part of broader cultural and social policies to enhance access to culture.

SUPPORT TRANSLATION OF CULTURAL CONTENT INTO MINORITY LANGUAGES

The analysis of interviews shows difficulties in respect of acquiring permission from copyright holders to translate into minority languages, and therefore restricting cultural offer to linguistic groups. Thus, cultural policies should ensure a better balance between the copyright of the holder and the needs of vulnerable groups.

SUPPORT EDUCATION IN AND AWARENESS OF AUDIENCE DEVELOPMENT STRATEGIES TO PROMOTE DEMOCRATISATION OF CULTURE

Data from interviews with representatives of vulnerable groups as part of Task 2.2 illustrate that public authorities, including publicly-funded cultural institutions, within States, have not been able to effectively leverage audience development strategies (i.e., i.e. a set of strategies employed by public authorities to ensure democratisation of culture) to encourage access to certain type of 'high culture' offerings by vulnerable groups. Audience development strategies should leverage copyright flexibilities to support access to culture for vulnerable groups.

ON PRIVATE ORDERING

REVIEW THE LANGUAGE / TERMS OF PLATFORMS' EULAS TO REACH A BETTER BALANCE

Misleading terminology and asymmetric terms and conditions of the standardized EULAs of OCSSPs are worrisome from not only copyright but consumer protection perspective as well. It is highly recommended to review whether service providers comply with the public regulatory sources regarding end-user flexibilities in a proper manner.

REVIEW THE NON-COMPLIANCE OF OCSSPS WITH THE NOVEL PUBLIC REGULATORY SOURCES

The analysed OCSSPs – at the time of the review of their EULAs – diverged from the provisions of the CDSM Directive in multiple ways, especially regarding the contractual bypassing of liability under Article 17(4) CDSM Directive and the lack of introduction of end-user safeguards in line with Article 17(7) and (9) CDSM Directive. It is highly recommended to initiate a stakeholders' dialogue first to check whether and how the private regulatory approach could be put into conformity with the public rules.

COORDINATE ARTICLE 17 CDSMD WITH INTERNATIONAL PRIVATE LAW PRINCIPLES

OCSSPs' current EULAs seem to bypass the proper application of public regulatory sources. It is highly recommended to analyse whether such provisions create any concerns from an international private law perspective as well (that is, whether the terms and conditions can be effectively enforced in line with the CDSM Directive's new provisions).

RECONSIDER THE LEGAL STATUS OF UGC

The CDSM Directive has added novel flexibilities to create and use UGC (e.g. via parody, pastiche, review etc. exceptions). At the same time, EULAs are already more flexible with respect to the sharing and use of such contents. It is highly recommended to review whether public regulatory sources need any further recalibration to meet the de facto online practices of end-users as well as to move UGC into the public regulatory space rather than leaving them in the private regulatory space.

REFERENCES

These policy recommendations **build on the report** Caterina Sganga et al (2022), Copyright flexibilities: mapping and comparative assessment of EU and national sources, available at www.recreating.eu.

The related datasets are available on www.copyrightflexibilities.eu.

Other key references are:

- European Commission, Directorate-General for Research and Innovation, Senftleben, M. (2022), *Study on EU copyright and related rights and access to and reuse of data*, Publications Office of the European Union, https://data.europa.eu/doi/10.2777/78973 (EC 2022a).
- European Commission, Directorate-General for Research and Innovation, Angelopoulos, C. (2022), *Study on EU copyright and related rights and access to and reuse of scientific publications, including open access : exceptions and limitations, rights retention strategies and the secondary publication right*, Publications Office of the European Union, https://data.europa.eu/doi/10.2777/891665 (EC 2022b).
- Ferri, D., Donnellan, K. (2022), The Implementation of the Marrakesh Treaty in the European Union: An Important Piece in the Accessibility Jigsaw?, 49(3) *Legal Issues of Economic Integration* 269.
- Higgins, N., Donnellan, K. (2022), Ireland's cultural policy and the protection and promotion of the cultural rights of migrants, *Cultural Trends*, DOI: 10.1080/09548963.2022.2053282.
- Higgins, N., Serra, L., Ferri, D. (forthcoming 2022), The Right to Culture for Asylum Seekers in Ireland: Lessons to Be Learned for the International Legal System' in *Migration and Culture: Implementation of Cultural Rights of Migrants*, edited by G.C.Bruno, F.M. Palombino, A. Di Stefano, G.M. Ruotolo.
- Mezei, P., Harkai, I. (2022), End-user flexibilities in digital copyright law – an empirical analysis of end-user license agreements, 5(1) *Interactive Entertainment Law Review* 2, <https://doi.org/10.4337/ielr.2022.0003>
- Sganga, C. (2015), Disability, Right to Culture and Copyright: Which Regulatory Option?, 29 International Review of Law, Computers and Technology 88.
- Sganga, C. (2017),The Eloquent Silence of Soulier and Doke and Its Critical Implications for EU Copyright Law, 12 Journal of Intellectual Property Law & Practice 321.
- Sganga, C. (2018), A Plea for Digital Exhaustion in EU Copyright Law, 9 Journal of Intellectual Property, Information, Technology & Electronic Commerce Law 211.
- Sganga, C. (2019), A Decade of Fair Balance Doctrine, and How to Fix It: Copyright Versus Fundamental Rights Before the CJEU from Promusicae to Funke Medien, Pelham and Spiegel Online, 11 European Intellectual Property Review 683.
- Sganga, C. (2020), A New Era for EU Copyright Exceptions and Limitations? Judicial Flexibility and Legislative Discretion in the Aftermath of the CDSM Directive and the CJEU Grand Chamber's Trio, 21(1) ERA Forum 311.
- Sganga, C. (2021), The Many Metamorphoses of Related Rights in EU Copyright Law: Unintended Consequences or Inevitable Developments?, 70 GRUR International 821.

The ReCreating Europe project aims at bringing a ground-breaking contribution to the understanding and management of copyright in the DSM, and at advancing the discussion on how IPRs can be best regulated to facilitate access to, consumption of and generation of cultural and creative products. The focus of such an exercise is on, inter alia, users' access to culture, barriers to accessibility, lending practices, content filtering performed by intermediaries, old and new business models in creative industries of different sizes, sectors and locations, experiences, perceptions and income developments of creators and performers, who are the beating heart of the EU cultural and copyright industries, and the emerging role of artificial intelligence (AI) in the creative process.

This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626